S. Hrg. 98-200

S. 1168—S. 1224—S. 1249

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1168

TO DECLARE THAT THE UNITED STATES HOLDS CERTAIN LANDS IN TRUST FOR THE KAW TRIBE OF OKLAHOMA

S. 1224

TO PROVIDE FOR THE DISPOSITION OF CERTAIN UNDISTRIBUTED JUDGMENT FUNDS AWARDED THE CREEK NATION

S. 1249

TO ADD A REPRESENTATIVE OF INDIAN TRIBAL GOVERNMENTS TO THE MEMBERSHIP OF THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

MAY 26, 1983

WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE

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S. 1168—S. 1224—S. 1249

MAY 26, 1983

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 3 p.m., in room 538, Dirksen Senate Office Building, Senator Mark Andrews (chairman of the committee) presiding.

Present: Senator Andrews.

Staff present: Paul Alexander, staff director; Peter S. Taylor, general counsel; and Max I. Richtman, minority staff director.

Senator ANDREWS. The hearing will come to order. The hearing this afternoon will address three bills before this committee: S. 1224, to provide for the disposition of certain undistributed judgment funds awarded the Creek Nation by the Indian Claims Commission; S. 1249, to add a representative of Indian tribal governments to the membership of the Advisory Commission on Intergovernmental Relations; and S. 1168, to declare that the United States hold certain lands in trust for the Kaw Tribe of Oklahoma.

I would note that there is some confusion and conflict within the administration—it is not unusual, is it?—over the recommendations that should be made with respect to S. 1168, the Kaw land transfer bill, and as a result administration witnesses have requested additional time to formulate their position. Of course, the committee will grant this request but I would urge a prompt resolution of the issue and I intend to set this bill for additional testimony for administration witnesses in the very near future. In the meantime, of course, we will receive the testimony of the Kaw tribal witnesses.

Without objection, at this point, I will place a copy of each of these bills in the hearing record.

[The bills follow:]

98TH CONGRESS
1ST SESSION

S. 1168

To declare that the United States holds certain lands in trust for the Kaw Tribe of Oklahoma.

IN THE SENATE OF THE UNITED STATES

APRIL 27 (legislative day, APRIL 26), 1983

Mr. BOREN (by request) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To declare that the United States holds certain lands in trust for the Kaw Tribe of Oklahoma.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subject to the provisions of subsection (c), all right, title, and interest of the United States in the surface estate of the land described in subsection (b) is hereby declared to be held by the United States in trust for the benefit and use of the Kaw Tribe of Oklahoma.

(b) The land described in this subsection is the following 132.50 acres, more or less, located within township 27 north, range 4 east, Indian meridian, in Kay County, Oklahoma:

Section 22, northwest quarter northeast quarter southeast quarter, east half east half southeast quarter, west half west half southeast quarter, west half west half east half southwest quarter southeast quarter, west half west half southeast quarter northwest quarter southeast quarter, northeast quarter northwest quarter southeast quarter.

Section 27, west half northwest quarter northeast quarter, west half west half east half northwest quarter northeast quarter.

(c) Nothing in this Act shall deprive any person (other than the United States) of any right-of-way, mineral interest, grazing permit, water right, or other right or interest which such person may have in the land described in subsection (b) on the date preceding the date of enactment of this Act.

98TH CONGRESS
1ST SESSION

S. 1224

To provide for the disposition of certain undistributed judgment funds awarded the Creek Nation.

IN THE SENATE OF THE UNITED STATES

MAY 5 (legislative day, MAY 2), 1983

Mr. NICKLES (for himself, Mr. BOREN, and Mr. DENTON) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the disposition of certain undistributed judgment funds awarded the Creek Nation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding Public Law 90–506 and any other provision of law, any funds appropriated by Public Law 89–697 in satisfaction of a judgment awarded the Muscogee (Creek) Nation of Oklahoma in docket numbered 276 of the Indian Claims Commission which have not been distributed on the date of enactment of this Act (including all interest and investment income accrued thereon) shall be distributed by the Secretary of the Interior to the Muscogee (Creek)

Nation of Oklahoma as needed to make expenditures for any plan or program authorized by ordinance of such Nation.

SEC. 2. (a) Notwithstanding Public Law 90–504 and any other provision of law, any funds appropriated by Public Law 89–16 in satisfaction of a judgment awarded the Creek Nation of Indians in docket numbered 21 of the Indian Claims Commission which have not been distributed on the date of enactment of this Act (including all interest and investment income accrued thereon) shall be used and distributed in accordance with the provisions of this section.

(b)(1) The Secretary of the Interior (hereinafter in this section referred to as the "Secretary") shall allocate—

(A) 81.6196 per centum of the funds described in subsection (a) to the Muscogee (Creek) Nation of Oklahoma, and

(B) 18.3804 per centum of the funds described in subsection (a) to the Eastern Creeks.

(2) The funds allocated to the Muscogee (Creek) Nation of Oklahoma under paragraph (1) shall be distributed to such Nation by the Secretary as needed to make expenditures for any plan or program authorized by ordinance of such Nation.

(3)(A) The funds allocated to the Eastern Creeks under paragraph (1) shall be held in trust and invested by the Secretary for the benefit of the Eastern Creeks.

(B) If the Eastern Creeks are not recognized as an Indian tribe by the Secretary prior to June 30, 1985, the funds held in trust under subparagraph (A) (including all interest and income accrued thereon) shall be distributed by the Secretary in the form of per capita payments to those Eastern Creeks who are eligible to receive per capita payments of any amount appropriated in satisfaction of a judgment awarded the Eastern Creeks in docket numbered 125 of the Indian Claims Commission.

(c)(1) The Secretary shall act on the petition for Federal recognition of the Eastern Creeks by no later than December 31, 1983.

(2) If the Secretary of the Interior fails to act on the petition described in paragraph (1) by November 3, 1983, the Secretary shall submit a report to the Congress on the reasons for such failure by no later than December 31, 1983.

98TH CONGRESS
1ST SESSION

S. 1249

To add a representative of Indian tribal governments to the membership of the Advisory Commission on Intergovernmental Relations.

IN THE SENATE OF THE UNITED STATES

MAY 10 (legislative day, MAY 9), 1983

Mr. ANDREWS (for himself, Mr. MELCHER, Mr. DECONCINI, Mr. DOMENICI, Mr. INOUYE, Mr. HATFIELD, Mr. NICKLES, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To add a representative of Indian tribal governments to the membership of the Advisory Commission on Intergovernmental Relations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 3 of Public Law 86–380 (42 U.S.C. 4273) is amended—

(1) by striking out "twenty-six members" and inserting in lieu thereof "twenty-seven members",

(2) by striking out "and" at the end of paragraph (6),

(3) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and", and

(4) by inserting after paragraph (7) the following new paragraph:

"(8) One appointed by the President either—

"(A) from a panel of at least two elected Indian tribal government officials submitted jointly by the National Congress of American Indians and the National Tribal Chairmen's Association, or

"(B) from among such other Indian tribal government officials as may be nominated by governing bodies of Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b))."

Senator ANDREWS. Our first witness today is Ken Smith, Assistant Secretary for Indian Affairs, Department of the Interior.

Welcome back Ken. We will start with the Advisory Commission bill first and then go on to the other bill.

STATEMENT OF KENNETH L. SMITH, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JOHN SHAPARD

Mr. SMITH. Thank you, Mr. Chairman. First of all, it is always a pleasure to appear before the Senate Select Committee. We want to present our views on S. 1249, a bill proposed by the administration to add a representative of Indian tribal governments to the membership of the Advisory Commission on Intergovernmental Relations.

We recommend enactment of S. 1249.

This administration is committed to the continuation of the government-to-government relationship between the Federal Government and Indian tribal governments. In recognition of this, S. 1249 would authorize an additional—the 27th—member of the Advisory Commission on Intergovernmental Relations to be appointed by the President. Many Indian leaders feel that their governments are not given equal recognition through their membership in national forums such as the Advisory Commission on Intergovernmental Relations. As more tribes assume greater responsibility for providing services to their local constituencies, interactions between tribal governments and local and State governments on problems of mutual concern and interests are going to increase.

This bill would underscore the Federal Government's support for that government relationship and would provide a recognition in respect of the tribal governments' desire among other units of government. That concludes my statement, Mr. Chairman. I will be glad to answer any questions.

Senator ANDREWS. Your full statement will be made a part of the record at this point.

[The prepared statement follows:]

PREPARED STATEMENT OF KENNETH L. SMITH, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, I am pleased to present the views of the Department of the Interior on S. 1249, a bill proposed by the administration to add a representative of Indian tribal governments to the membership of the Advisory Commission on Intergovernmental Relations.

We recommend enactment of S. 1249.

This administration is committed to the continuation of the government-to-government relationship between the Federal Government and Indian tribal governments. In recognition of this, S. 1249 would authorize an additional (twenty-seventh) member of the Advisory Commission on Intergovernmental Relations to be appointed by the President either from a panel of at least two elected Indian tribal government officials submitted jointly by the National Congress of American Indians and the National Tribal Chairman's Association, or from among Indian tribal government officials nominated by governing bodies of Indian tribes as defined in the Indian Self-Determination and Education Assistance Act.

The act establishing the Commission includes within the purposes and duties of the Commission the representation of all general purpose units of governments. We believe that such representation is not complete without the inclusion of Indian tribal governments.

Indian tribal governments are not subordinate to State governments nor their subdivisions. As the President's January 24, 1983, statement on Indian policy

points out, tribal government functions include enforcing tribal laws through their courts, police, and other tribal agencies, providing health and social services, educating children, as well as developing and managing tribal resources. Representation of Indian tribal governments on the Commission will enhance the ability of the Commission to fulfill its purposes, while aiding tribal governments to better serve the needs of their tribes.

This concludes my prepared statement. I will be happy to answer any questions you may have.

Senator ANDREWS. Mr. Secretary, could you explain how the addition of an Indian member is in keeping with the President's Indian policy statement.

Mr. SMITH. Yes, it was one of the items that was recommended very strongly in the President's policy of January 14 of this year, 1983. We went over several things that the administration could recommend. This was one that we felt very strongly about and that we should recommend to Congress to appoint another member to represent tribal governments on this particular Commission.

Senator ANDREWS. Does the addition of an Indian member in any way change the role or function of the Advisory Commission?

Mr. SMITH. No, it does not change their role at all. We think it would be better for the tribal governments to be represented because of mutual issues that are occurring in several of the States, the county governments, and the cities. We think it would be beneficial.

Senator ANDREWS. Are you aware that in the statement submitted to this committee that the Advisory Commission opposes enactment of S. 1249 because they say: (a) the current number of members is optimum in its view; and (b) Indian governments are not universal governments and the governmental membership of the Advisory Commission was intended to represent universal government? Could you comment on this opposition?

Mr. SMITH. I just saw the letter a little while ago. I have not had a chance to look closely at it. or review it. But, it appears to me that one of the problems with this particular Commission is that the Commission does not understand Indian tribes and that they are sovereign governments. It appears to me that maybe we should educate this particular Commission. I think that is what we are trying to do. There is no magic number about 26, or 27, or 28. It is just a number.

Senator ANDREWS. Thank you, Mr. Secretary. You have been most helpful with your statement which, as I said, will be very useful, of course. We appreciate your coming up.

I would like, at this point, to put into the record the letter that I received on May 24 from the Advisory Commission on Intergovernmental Relations concerning S. 1249 and two letters addressed to Senator Durenberger on the same subject.

[The letters follow:]

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., May 23, 1983.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs, Dirksen Senate Office Building, Washington, D.C.

(Attention of Paul Alexander.)

DEAR CHAIRMAN ANDREWS: We appreciate the opportunity to submit a statement of our views on S. 1249, which would expand the membership of the Advisory Commission on Intergovernmental Relations (ACIR) to include a representative of Indian tribal governments, for your hearing record.

The Congress established certain characteristics of the ACIR in our 1959 authorizing legislation. The Commission uses these same criteria whenever it considers proposals for adding members or otherwise altering its composition. These criteria include:

Governmental balance (9 federal, 7 state, and 7 local representatives).

Bipartisan balance (a maximum of 18 members from the President's party out of the 26 total).

Appointment of only elected officials except for federal executives who, although not elected, are "political" policy-making officials.

Representation of only general governments—no special purpose or single-function units.

Represented general governments should be universal or nearly so in our nation. (Counties or their equivalent are found in all states except Connecticut and Rhode Island.)

In addition to the above criteria, the Commission feels it should not become too large to be ineffective as a deliberative body. Since its creation, the Commission has always had 26 members.

On March 11, 1983, the Commission again reviewed the issues associated with expanding its membership and changing its composition. It concluded that the Commission should not be enlarged, and that the above criteria should continue to be used in assessing proposals for modifying its make-up.

The ACIR does not support enactment of S. 1249. It increases the size of the Commission and may add a category of membership that is contrary to some of the criteria used in the past. Indian tribes and their reservations do qualify as general governments, but they represent a very small part of the American population (less than 1 percent) and they are not a type of governmental unit that is virtually universal (Indian reservations are found in 33 states). Indian tribes represent a small special population with a peculiar, albeit serious, set of governance issues.

Legally, the Indian tribes lie within the national borders but are not parts of the states in the way that local governments are. To the extent that the tribes are just as sovereign as the 50 states, a case could be made that they are as universal for their groups of governments as the states are for theirs, with no overlap between the two. This viewpoint has been adopted by the President in supporting this legislation. However, the Commission has not taken a similar position on this matter.

The Commission did consider several membership proposals covering many different groups in March, but did not specifically examine the unique legal character of the Indian tribes. Although there may be nothing magical about 26 or 27 members for its deliberations, the Commission's formal position is not to support any proposals calling for increased members.

Under a long-standing policy (copy enclosed), if ACIR ever undertakes research that directly studies Indian governance subjects, the Commission would appoint two special advisors for the duration of that project. These special advisors would be drawn from officials nominated by the appropriate public interest groups. I presume that the National Congress of American Indians and the National Tribal Chairmen's Association would be potential nominating groups.

Thank you again for the opportunity to comment on this bill. Please contact me if there is any further information I can provide to aid your consideration of S. 1249.

Sincerely,

S. KENNETH HOWARD,
Executive Director.

Enclosure.

U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS POLICY ON APPOINTMENT OF SPECIAL ADVISORS TO ACIR ADOPTED BY THE COMMISSION, APRIL 12, 1975

Whenever ACIR undertakes a research project involving direct study of a substantial element of school districts, townships, regional instrumentalities, specific types of special districts, or other types of governments or governmental instrumentalities that are not directly represented on the Commission, the Commission will, upon nomination of candidates by the public interest group that represents legislative officials of such governmental units or instrumentalities, appoint two special advisors who shall be entitled to attend all Commission meetings where the project is to be discussed and to participate in the debate

but not to vote. Such special advisors shall be drawn from legislative officials currently serving such governments or government instrumentalities. Accordingly, the nominating public interest group will be requested to nominate not less than four serving legislative officials.

LEECH LAKE RESERVATION BUSINESS COMMITTEE,
Cass Lake, Minn., March 14, 1983.

Hon. DAVID DURENBERGER,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR DURENBERGER: We wish to congratulate you on your recent appointment to the Advisory Commission on Intergovernmental Relations. We are most pleased at the prospect of having a friend serving on a commission which offers such great potential for the improvement and clarification of federal/Indian tribal relations.

I am sure that you are aware of the current lack of tribal membership on this commission and would hope that you will be able to take steps to correct this oversight. In the House of Representatives a bill, H.R. 1617, has been offered which makes some changes in the membership and procedures of the Commission on Intergovernmental relations; however, this bill does not provide for tribal government representation. We are not aware of a companion bill in the Senate.

It is our earnest hope that some needed changes can be implemented in the structure of the Commission to permit necessary voicing of the concerns of America's many federally-recognized Indian tribal governments. We will deeply appreciate any efforts which you may be able to put forth toward this end.

Again, congratulations on your appointment—we are confident that you will perform with excellence.

Mi-Gwitch!

HARTLEY WHITE, *Chairman.*

LEECH LAKE RESERVATION BUSINESS COMMITTEE,
Cass Lake, Minn., May 16, 1983.

Hon. DAVID DURENBERGER,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR DURENBURGER: I am writing to direct your attention to a very worthwhile bill, S. 1249, which was introduced on May 10 by Senators Andrews, Melcher, DeConcini, Domenici, Inouye, Hatfield, Nickles, and Bingaman. The purpose of S. 1249 is to add a representative of Indian tribal government to the membership of the Advisory Commission on Intergovernmental Relations.

We are very pleased that such a bill has been introduced, since we feel strongly that tribal representation is much-needed on this Commission. You may recall that I wrote you once before on this particular subject—I am enclosing a copy of that March 14 letter to refresh your memory. At the time that that letter was written, there was no Senate bill authorizing Indian tribal membership on the Advisory Commission on Intergovernmental Relations. Now that S. 1249 has been introduced, and since it has been authored by such an emminent bi-partisan group of your colleagues, and since you are a member of the ACIR, I think that it would be most helpful to the bill if you were to add your name to the list of authors and I would sincerely encourage you to do so.

Your help on securing passage for S. 1249 will be greatly appreciated.

Mi-Gwitch!

Sincerely,

HARTLEY WHITE, *Chairman.*

Senator ANDREWS. Do you have a statement on S. 1224?

Mr. SMITH. Yes, Mr. Chairman. I have John Shapard to my left here, who is with our——

Senator ANDREWS. Will you get into trouble? Do you always bring——

Mr. SMITH. I always bring an expert. I am not anticipating any questions but if I do I will turn it over to John. It is a pleasure to

respond to this particular bill. I am pleased to present our views on this particular bill, S. 1224, to provide for the disposition of certain undistributed judgment funds awarded to the Creek Nation. We recommend enactment of S. 1224 if amended as we suggest. With respect to the Oklahoma Creek shares, we support the use of residual funds for tribal programs. The provision for programing the eastern Creek share pending Federal acknowledgment would, however, result in an unequitable distribution.

S. 1224 would distribute the total eastern Creek share to one eastern Creek beneficiary group if Federal acknowledgement is accorded. The bill is unclear as to which eastern Creek group would benefit. There are seven groups and some scattered descendants not belonging to any group. Since these eastern Creeks who shared in the 1968 per capita distribution are representative of these seven groups, the proposed distribution to only one group would deny many of the eastern Creeks who shared in the judgment award in docket 21, eligibility to participate in the residual funds of the same award. We feel very strongly it should be shared equally by all seven groups and to the scattered descendants of the original claim. Therefore, we recommend that S. 1224 be amended to distribute the eastern Creek share on a total per capita basis. Further, we recommend that the eastern Creek funds remaining in docket 21 be added to the eastern Creek portion of docket 275 which is pending distribution under a secretarial plan which became effective June 15, 1978. We would be willing to work with the committee in developing these proposed amendments. That concludes my statement.

Senator ANDREWS. Thank you. At the outset, I would like to make a part of the record a letter from Mr. Krenzke of the Bureau of Indian Affairs to Senator Nickles, dated March 26, 1982.

This letter will be made a part of the record at this point.

[The letter follows:]

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., March 26, 1982.

Hon. DON NICKLES,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NICKLES: This is in further response to your letters in behalf of Mr. Claude Cox, Principal Chief, Muskogee (Creek) Nation, requesting our comments concerning a draft proposal to restore to tribal ownership the undistributed balances from the 1971 per capita payment made from Creek Dockets 21 and 276 funds.

Public Law 90-596 of September 21, 1968, provided for the disposition of funds awarded to the Creek Nation of Indians in Docket 276. Those eligible to share in this award had to meet the following requirements: (1) they were born on or prior to the date of the Act and (2) their names or the names of lineal ancestors through whom eligibility is claimed appeared on either the 1857 or 1859 payment roll prepared pursuant to Article VI of the Treaty of August 7, 1856 (11 Stat. 699), or on the Final Roll of Creeks by Blood closed as of March 4, 1907.

The summary of trust accounts for Docket 276 shows a balance in 14X9277/2605 of $3,202.69 and 14X9777/2605 of $26,748.89. The Oklahoma Creeks are the beneficiary of these funds.

Public Law 90-504 of September 21, 1968, provided for the disposition of funds appropriated to pay a judgment in favor of the Creek Nation of Indians in Docket 21. Those eligible to share in this award included those persons who were (a) born on or prior to and were living on the date of the Act; (b) their names

or the names of lineal ancestors appeared on any of the documents identified herein or on any available census rolls or other records acceptable to the Secretary, which identified the person as a Creek Indian, including ancient documents or records of the United States located in the National Archives, State or county records in the archives of the several states or counties therein or in the courthouses thereof, and other records that would be admissible as evidence such as:

(1) The Final Rolls of Creeks by Blood which were closed as of March 4, 1907;

(2) Claims of Friendly Creeks paid under the Act of March 3, 1817;

(3) Census of the Creek Nation, 1833, made pursuant to Article 2 of the Treaty concluded March 24, 1832;

(4) Land Location Registers of Creek Indian Lands, made pursuant to the Treaty of March 24, 1832;

(5) Any emigration or muster rolls of Creek Indians;

(6) Any lists of self-emigrant Creek claimants.

Our records show that 41,652 were determined eligible to share in the funds from Docket 21. Of those applicants 33,968 were Oklahoma Creeks and 7,235 were Eastern Creeks. Each eligible applicant's share in Docket 21 was $112.13. Funds were set aside to allow payment to the 3,591 applicants who were rejected and filed appeals. Of those appellants, 29 Oklahoma Creeks and 420 Eastern Creeks were sustained resulting in an undistributed balance in the accounts.

As of October 31, 1981, there was a balance in the Docket 21 principal accounts 14X9282/2605 of $95,980.19 and 14X9282/2610 of $2,138.01 and the interest accounts 14X9782/2605 in the amount of $770,330.18 and $10,933.65 in 14X9782/2610.

To arrive at the proportionate share due the Eastern Creeks the total number of Eastern Creeks (7,655) was divided by the total number of applicants who shared in Docket 21 (41,652) which accounted for 18.380%. To compute the proportionate share due the Oklahoma Creeks, we divided the number of eligible Oklahoma Creeks (33,997) by the total number of applicants (41,652) and arrived at 81.619%.

We agree with the proposed bill for the disposition of the undistributed balances with the suggested changes as follows:

Section 1. We think that the "undistributed balances" of the fund would include the so called "appeal money" as well as the unclaimed per capita shares. Therefore, "as provided for under P.L. 87-282; Act of September 22, 1961; 75 Stat., 584," which pertains only to unclaimed per capita shares, should be deleted.

Section 3. The only feasible way to distribute the funds to the Eastern Creeks since they are not federally recognized is to combine these funds with the pending payment from Docket 275. Therefore, change the last two sentences to read, "The Secretary of the Interior shall make available to the Eastern Creeks, its portion of the undistributed balance in Docket 21 to be combined and paid out with their share of funds pending a per capita payment from Docket 275."

This draft has been provided as a service; it has not been cleared by the Department or the Office of Management and Budget.

Sincerely,

THEODORE C. KRENZKE,
Acting Deputy Assistant Secretary,
Indian Affairs (Operations).

Senator ANDREWS. This letter indicates 41,000 persons of Creek descent participated in the original distribution of funds, docket No. 21. Over 7,000 of these people were eastern Creeks. If the remaining funds, through docket 21, were distributed to the eastern Creeks descendants as you recommend, what do you estimate would be the per capita share of each individual excluding those funds in docket No. 275.

Mr. SMITH. If you look at the eastern Creek and if we distribute approximately $180,000 between 9,000 plus participants, we would only come up with about $20 per share.

Senator ANDREWS. In light of the pending petition of the Poarch Band of Creek Indians and other Creek groups, do you believe that a simple per capita distribution is a wise disposition of these funds?

Mr. SMITH. If they were a unit of government or a tribe that is acknowledged by the Secretary, I would prefer the money to go to programs, but where a tribe has not been acknowledged at this particular time and we do not know when that is going to happen, then we would recommend very strongly to distribute it per capita.

Senator ANDREWS. You have indicated three different groups of eastern Creeks that filed petitions for acknowledgment as federally recognized tribes, and that two other petitions have been denied. Can you supply us with the names of these groups and their claim to membership?

Mr. SMITH. Yes, Mr. Chairman.

Senator ANDREWS. I would like the same information, if I could, with respect to the two groups whose petitions were denied and those groups, you believe. may file them. Can you provide that?

Mr. SMITH. We will provide that.

[Subsequent to the hearing the following material was supplied for the record:]

STATUS OF KNOWN CREEK GROUPS

Name and address	Status	Estimated Size	
		Current Mbrshp	Unassoc. Descds.
Alabama			
Creek Nation East of the Mississippi c/o Mr. Eddie L. Tullis Route 3, Box 243-A Atmore, Alabama 36502	Under active consideration. Proposed fundings estimated ready for surnaming October 21, 1983.	1,743	300
Principal Creek Indian Nation East of the Mississippi Mr. Arthur R. Turner P.O. Box 201 Florala, Alabama 36442	Under active consideration. Proposed findings estimated ready for surnaming March 23, 1984.	412	600
Machis Lower Alabama Creek Indian Tribe, Inc. c/o Mrs. Pennie Wright 708 S. John Street New Brockton, Alabama 36351	Contacted - interested in petitioning and currently working on petition.	168	50
Florida			
Creeks East of the Mississippi c/o Mr. John Wesley Thomley Molino, Florida 32577	Denied acknowledgment effective December 21, 1981.	2,696	1,000
Florida Tribe of Eastern Creek c/o Mrs. Juanita S. Sandifer 8058 Templeton Road Pensacola, Florida 32506	Petitioner - currently preparing necessary documentation.	1,500	800
Muskogee Creek Indian Nation East of the Mississippi c/o Mr. Sam Blue P.O. Box 817 Perry, Florida 32347	Contacted - interested in petitioning.	Not available	Not available

Topachula Indian Community (Pine Arbor) c/o Pine Arbor Tribal Town 602 Gunther Street Tallahassee, Florida 32308	Contacted - interested in petitioning.	Not available	Not available
Georgia			
Lower Muskogee Creek Tribe - East of the Mississippi c/o Mr. Neal McCormick Route 1, Tama Reservation Cairo, Georgia 31728	Denied acknowledgment effective December 21, 1981.	1,041	500
Indiana			
Creek Indian Nation - East of the Mississippi c/o Mr. Stewart Rodda P.O. Box 323 Greensburg, Indiana 47240	Group contacted FAP in 1979 re: acknowledgment. Letter to group in 1981 re: funding returned addressee unknown.	Not available	Not available

Senator ANDREWS. What is the current status of the three petitions of the eastern Creek groups that are still active.

Mr. SMITH. I will have Mr. Shapard respond to that.

Mr. SHAPARD. The first group, or the group we are working on presently, are the Poarch Band of Creeks in Alabama. We have researchers in the field now. We anticipate having proposed findings by this fall and the final determination would be 6 to 10 months after that, depending upon the course of the appeal process. If there is no appeal, then it would run much quicker.

Senator ANDREWS. What then would you give as the anticipated distribution date for docket 275?

Mr. SHAPARD. That is not contingent on the recognition of these groups. There have been approximately 900 appeals for this docket. It has taken a year to do a little better than half of them—over 500. Based on that, we can estimate approximately another year.

Senator ANDREWS. But the Secretary's proposed distribution, as I understand it, would utilize docket 275 to put the money in docket 275, would it not?

Mr. SHAPARD. That is my understanding.

Senator ANDREWS. When would that be distributed; within a year?

Mr. SHAPARD. I do not think we can answer that question at this time.

Senator ANDREWS. Can you take a wild "outhouse" guess, as we would say back home.

Mr. SHAPARD. Maybe the Secretary would like to——

Mr. SMITH. It has been indicated, if this particular bill is passed, and if amended as recommended to combine the two funds and distribute them at the same time, it would probably take about 1 year.

Senator ANDREWS. So I guess, a year is about accurate.

Mr. SMITH. Yes.

Senator ANDREWS. Thank you very much, Mr. Secretary.

Mr. SMITH. Thank you, Mr. Chairman.

[The prepared statement follows:]

PREPARED STATEMENT OF KENNETH L. SMITH, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, I am pleased to present the views of the Department of the Interior on S. 1224, a bill "to provide for the disposition of certain undistributed judgment funds awarded the Creek Nation."

We recommend enactment of S. 1224, if amended as we suggest.

S. 1224 would distribute any funds remaining from the judgment award in Docket 276 of the Indian Claims Commission to the Muscogee (Creek) Nation of Oklahoma for tribal programming purposes. In addition, the bill would divide those funds remaining from the judgment award in Docket 21 between the Muscogee (Creek) Nation of Oklahoma and the Eastern Creeks. The portion allocated to the Oklahoma Creek Nation would be used for tribal programming and the portion allocated to the Eastern Creeks would be held in trust and invested by the Secretary pending Federal acknowledgement for the Eastern Creek group. If Federal acknowledgement is accorded, the funds would be used for tribal programming. However, if the Eastern Creek group is not acknowledged by June 30, 1985, the funds held in trust would be distributed per capita to those Eastern Creeks eligible to participate in the judgment awarded in Docket 275 of the Indian Claims Commission.

S. 1224 would provide for the disposition of those funds remaining under the two Acts of September 21, 1968 (P.L. 90-504; 82 Stat. 855 and P.L. 90-506; 82 Stat. 859) which provided for total per capita distribution to the Creek Indians. Under P.L. 90-506, the award in Docket 276 was shared only by the Creek

Indians of Oklahoma. Under P.L. 90-504, the award in Docket 21 was shared by descendants of the Creek Nation of Oklahoma and the Creek Indians east of the Mississippi. The funds remaining in the U.S. Treasury accounts represent (1) funds which were withheld to cover the shares of the appellants whose applications for participation in these judgment funds had been denied and (2) per capita share of individuals whose whereabouts are unknown. Under the 1968 distribution acts, these funds are to be disbursed on a per capita share basis to the 1968 enrollees.

S. 1224 would provide an alternative distribution of such funds. With respect to the Oklahoma Creek shares, we support the use of the residual funds for tribal programs. The provision for programming the Eastern Creek share pending Federal acknowledgement would, however, result in an inequitable distribution. While we have no objection to investing the funds pending acknowledgement, S. 1224 would distribute the total Eastern Creek share to one Eastern Creek beneficiary group if Federal acknowledgement is accorded. The bill is unclear as to which Eastern Creek group would benefit. We point out that the Department presently has pending petitions filed by three Eastern Creek groups seeking Federal acknowledgement. In addition to two Eastern Creek groups which have been denied Federal acknowledgement, we are also aware of two other Eastern Creek groups which may file petitions for acknowledgement in the future. Since those Eastern Creeks who shared in the 1968 per capita distribution are representative of these seven groups, the proposed distribution to only one group would deny many of those Eastern Creeks who shared in the judgment award in Docket 21 eligibility to participate in the residual funds of the same award.

Therefore, we recommend that S. 1224 be amended to distribute the Eastern Creek share on a total per capita basis. Further, we recommend that the Eastern Creek funds remaining in Docket 21 be added to the Eastern Creek portion of Docket 275 which is pending distribution under a secretarial plan which became effective June 15, 1978.

As of April 30, 1983, the Eastern Creek portion of funds in Docket 275 (including interest) was $528,302.87. Combining this amount with the 18.3804 percent of the $1,013,192.90 in Docket 21 (representing the balance as of April 30, 1983, including interest) would provide a more practical and less costly per capita distribution. Further, we note that section 2 of S. 1224 would tie the eligibility requirements for Docket 21 to those in Docket 275 in the event the funds are distributed per capita. Using the same eligibility requirements for funds under Dockets 21 and 275 would provide an equitable per capita distribution of the Combined Awards.

We would be willing to work with the committee in developing these proposed amendments.

This concludes my prepared statement. I will be pleased to respond to any questions the committee may have.

Senator ANDREWS. We next have two witnesses on behalf of S. 1224. Mr. Bill Fife, director of the division of tribal affairs for the Muscogee Nation of Okmulgee, Okla., and Eddie Tullis. the chief of the Poarch Band of Creek Indians from Atmore, Ala. Gentlemen, let me assure you that your total statements will appear as if given in full, word for word.

STATEMENT OF BILL FIFE, DIRECTOR, DIVISION OF TRIBAL AFFAIRS, MUSCOGEE NATION, OKMULGEE, OKLA.

Mr. FIFE. Mr. Chairman, I am Bill Fife, director of tribal affairs for the Muscogee Nation and an enrolled full citizen of the tribe. I am here today representing Claude A. Cox, the principal chief of the Muscogee Nation. The Muscogee Nation is the country's third largest federally recognized tribal government with an estimated eligible membership of 45,000. of whom 13,710 have enrolled in the past 24 months. The tribe functions under its 1979 constitution adopted under the procedures of the Oklahoma Indian Welfare Act of 1936.

That constitution established an elected principal chief and second chief who serve 4-year terms: a national council of representatives elected from eight geographic districts for 2-year terms; and six-member supreme court and independent agencies for citizenship and elections. The tribal government is currently very stable and is preparing for its elections this fall.

The Muscogee Nation supports S. 1224, and thanks Senator Nickles, Senator Boren, and Senator Denton for sponsoring this bill.

The bill is required because the 1968 statute, which authorized the per capita distribution of these funds, did not provide for the use of funds left over after the per capita claims had been settled. Funds were set aside for about 4,000 appeals, but only about 400 of those appeals were sustained. The amounts reflected in the bill included funds set aside for appeals which were later denied, and the interest earned on those funds.

The Muscogee Nation is very interested in the passage of this bill. The nation has requested the use of these funds through its ordinance process. Previous tribal legislation has approved the use of docket 21 funds to purchase lands for agricultural use in conjunction with the tribe's agribusiness complex of dairy and related operations and has also approved the use of docket 276 funds to purchase certificates of deposit, the income from which would endow to the tribe's funeral assistance program. The principal chief will recommend the readoption of these provisions if Senate bill 1224 becomes law.

These programs have been perceived as high priorities by tribal leaders and have had broad support from tribal members. Furthermore, Senate bill 1224 will provide the tribe with the flexibility it needs in making additional decisions in expenditures of any balance or even if the tribal council sees better ways to spend these funds. The most important thing about the legislation is that it allows the internal decisionmaking processes of the tribe to function independently of any federally established priorities or policies and allows the tribal government to fulfill its obligations to its citizens by being the primary forum for these decisions to take place.

Mr. Chairman, that concludes my testimony.

Senator ANDREWS. Thank you.

Mr. Tullis, do you have a prepared statement.

Mr. TULLIS. Yes, sir. I have provided a copy to you.

Senator ANDREWS. That will be included in its entirety in the record. You may summarize it.

STATEMENT OF EDDIE TULLIS, CHAIRMAN, POARCH BAND OF CREEK INDIANS, ATMORE, ALA.

Mr. TULLIS. Mr. Chairman, I am Eddie Tullis, the elected tribal chairman of the Poarch Band of Creek Indians at Atmore, Ala. and my statement will include four very short statements. No. 1 is a statement of support for the intent of 1224. I would like also to propose some amendments to it as I have seen the bill in the form that it now exists. I would like also to provide a short overview of Poarch Band of Creeks since we have been mentioned here and I would also like to relate to the committee our proposed use of those funds if 1224 is passed as we propose it amended. We do support the intent of 1224

which is to distribute these funds. We propose some amendments and if you would like, I will repeat those. If not, they are in my testimony.

Senator ANDREWS. They are in the record. I would appreciate it if you would give us a brief overview of the petition process from the standpoint of your tribe. When was your petition filed and how voluminous is it and what are the steps involved?

Mr. TULLIS. In 1971, whenever the per capita distribution of docket 21 funds were begun, the tribal council of the Poarch Band of Creeks then, through its process, decided that our No. 1 priority from that date forward would be the reestablishment of a recognition process.

In 1971, we filed a letter of intent with the Department of the Interior asking that we be recognized as a tribe. In 1975, with the help of the native American rights funds we filed a legal, historical brief with the Department of the Interior asking that we be recognized as a group of tribal Indians. In September of 1975, the State of Alabama joined with us and petitioned the Department of the Interior to take a piece of land that the State held title to in trust for the Poarch Band of Creeks.

In 1978, the Bureau told us that they were in the process of reviewing whether or not we should be entitled to a trust relationship and that they would get back to us. In 1978, the Department adopted its criteria that it now uses in a recognition process and then renotified us that our petition should be redone and structured to address itself to the petition that the Bureau itself had administratively adopted.

We redid the petition and put it back into the Bureau in 1980. In 1980 again, the State of Alabama resubmitted a letter to the Department of the Interior restating its offer to provide the property to be taken into trust. The entire Alabama congressional delegation, on more than one occasion, has relayed its support of the Poarch Band of Creeks to the Department of the Interior and that letter of support was just updated this year.

Mr. Chairman, it has been a 12-year process that we have been working on. As Mr. Shapard said a while ago, the staff of that office is at force now.

One of the problems that we see with 1224 is that it talks about the Eastern Creeks and they are only looking actively at the Poarch Band of Creeks now, so we feel that there will be quite a delay before they complete this look at all of the Eastern Creek groups. We would like for the bill to put some limitations on when the Bureau looks at the Poarch Band of Creeks.

The Poarch Band of Creeks does constitute a body of Creek Indians. Though separated from the Creek Nation in the 1800's, we have survived for a hundred years. We continue to survive and have a viable community there. We have an elected leadership. We propose that if this bill passes as we propose the amendment, to use the money for similar reasons to the Oklahoma Creeks.

Education is a very high priority in our tribe when we find that 75 percent of our people have only an elementary education. We propose to establish a trust fund to use part of this money for education.

We also are in ownership of one of the last historical sites of the Creek nation before the removal to Oklahoma. We propose to use

part of this money to make that site, not only available to all of our people, but to the general public as well.

We see the major problem with this bill, as it is written now, is that it will allow the Department of the Interior and the Bureau to hold that money that would go to the Eastern Creeks for an extended period of time and we hope that that will be alleviated by 1224 as we recommend it be amended.

Senator ANDREWS. What is the current membership of the Poarch Band and what criteria does the band have in determining members?

Mr. TULLIS. The Poarch Band of Creeks currently has an existing membership of 1,462. Our membership criteria requires direct descendancy from people listed on the earliest existing Federal censuses, which were 1890 and 1900, of one-quarter blood of those descendants.

Senator ANDREWS. Is your band recognized as a tribe by the State of Alabama?

Mr. TULLIS. Yes, sir. As I stated earlier, the State of Alabama has offered to the Department of the Interior property that the State holds in trust for the Bureau. The Alabama State Legislature recognizes the Poarch Band of Creeks as a tribal group.

Senator ANDREWS. Are any of the other groups that were mentioned by Secretary Smith recognized by Alabama or any other State as far as you know?

Mr. TULLIS. Not to my knowledge. There are no official State documents to my knowledge, with anything recognizing either of those groups. The groups that have been turned down—I can comment on those real good. In their rejection of those petitions of those groups, more than 10 times they refer back to the Poarch community as being the existing governing body of the Eastern Creeks.

[The prepared statement follows:]

PREPARED STATEMENT OF EDDIE TULLIS, CHAIRMAN, POARCH BAND OF CREEK INDIANS, ATMORE, ALA.

Mr. Chairman, distinguished members of the Senate Select Committee, interested parties: I'm Eddie Tullis, chairman, of the Poarch Band of Creeks, Atmore, Alabama. I'd like to express appreciation for this opportunity to present testimony regarding S. 1224.

My testimony includes: (1) a statement of support for the intent of S. 1224; (2) proposed amendments to S. 1224; (3) an overview of the Poarch Band of Creeks; and (4) if amended, proposed use of the funds.

First, the Poarch Band of Creeks support the intent of S. 1224 which is an effort to provide for the disposition of certain undistributed judgment funds awarded the Creek Nation.

However, the Poarch Band of Creeks propose the following amendments to S. 1224:

On page 2, line 24: add to the last sentence the following phrase . . . "Until such time as the Secretary recognizes the Eastern Creeks as an Indian tribe." Add another sentence . . . "At that time, the funds shall be allocated to the governing body of the Eastern Creeks."

Page 3, line 8: Remove number "125" and add number "21".

Page 3, line 11: Following "Eastern Creeks" add "Poarch, Alabama".

Since before the beginning of recorded history in North America the Creek Nation had occupied the southeastern part of the continent, including most of what are now the States of Georgia and Alabama. The Creeks withstood the disruptive influence of European invaders until the white man's war of 1812 found the Creeks divided in their loyalty to the newly-formed United States on the one hand, and its colonial predecessor, Great Britain, on the other. During the war, the portion of the Creek Nation known as the Upper Creeks fought against the United States, while the Lower Creeks and a few warriors

from the Upper Division allied with the new nation. The division between the Creeks resulted in a civil war within the Creek Nation itself, with the United States fighting alongside its Lower Creek allies.

With the defeat of Great Britain (and simultaneously, the defeat of the Upper Creeks) the United States found itself in a position of superior military authority. From this position, in 1814, the administration imposed the Treaty of Fort Jackson upon the Creek Nation. By the Treaty of Fort Jackson the United States obtained a great cession of land from the Creek Nation, including most of southwestern Alabama. Those Creeks who had been friendly to the United States during the war objected to this loss of their hunting grounds, so the treaty allowed individual warriors and their descendants to choose land "which shall insure to the said chief or warrior, and his descendants, so long as he or they shall continue to occupy the same, who shall be protected by and subject to the laws of the United States."

Due to the reluctance of local and State officials to accept and enforce the treaty of Fort Jackson, Lynn McGhee, a friendly Creek warrior who was injured in the war, and others petitioned the United States Congress to honor the obligations as stated in the Treaty of Fort Jackson.

In 1836, a year by which most members of the Creek Nation had been forcibly removed to the new Indian territories west of the Mississippi River, the Congress of the United States re-established Indian land in Alabama.

Lynn McGhee's and other petitioners' dependents intermarried with other friendly Creeks, and some of the hostiles who had avoided the forced removal, settled and remained to this day on or near this Indian land at Poarch, Alabama.

For a while the United States continued to protect the interests of the Alabama Creeks in accordance with the treaty and established law. Examples of his exercise of a trust relationship occurred in 1912, when the United States brought suit to penalize trespassers who were cutting timber on Indian land, and in 1920, when the United States intervened to stop illegal State taxation of the Indian land. It is clear from these actions and other evidence that the United States believed that it had a trust responsibility towards the Creek Indians of Alabama.

However, in 1924, the Department of Interior illegally issued a land patent to one of McGhee"s descendants. This action—in effect removing the land from trust status—was not authorized by any act of Congress. As a result of Interior's oversight, much of the land has been alienated.

In 1971, with the distribution of the proceeds of the land claims cases finally underway, the tribal council of the Poarch Band of Creeks adopted as its number one priority the re-establishment of a government-to-government relationship with the Federal Government. In this effort we have been supported and aided by local and State officials, our entire congressional delegation, the other tribes of the Southeast, National Indian organizations, and very much so by actions of this committee, for which we are very grateful.

As a brief review of the efforts to accomplish this goal, I'd like to share a sequence of events:

May 1975: Department of Interior/Bureau of Indian Affairs received the petition for Federal recognition from the Poarch Band of Creeks.

September 1975: Alabama Governor writes to Commissioner of Indian Affairs Thompson offering to donate 18 acres of State land to the United States to be held in trust for the Creeks. (This land is at the center of the Poarch community and would make an ideal site for the hoped-for cultural center.)

September 1975: Attorney for the Creeks requests that the Department of Interior accept Alabama's offer.

October 1975: Attorney replies that the Creek request is not for recognition; that, in fact, they already have it in the form of a trust land base—the fact that his land base has been alienated through administrative errors does not terminate the trust status.

December 1975: Secretary of Interior Kleppe informs a Presidential assistant (who had inquired into the matter on behalf of the Creeks) that the Department is in the midst of some confusion about Federal recognition and the Creek contention that they already have it will take time to investigate.

September 1978: Bureau of Indian Affairs published final regulations which provides procedures for acknowledging that certain Indian tribes exist.

May 1980: Alabama Governor James writes letter of inquiry regarding status of the land offered in trust by former Governor Wallace to the Department of Interior on September 15, 1975.

December 1982: Poarch Band of Creeks receive letter of notification from the Department of Interior that our petition for Federal recognition was officially placed under active consideration on November 3, 1982.

February 1983: Alabama Congressional Delegation updates letter of support for the Poarch Band of Creeks' petition for Federal recognition.

The Poarch Band constitutes a body of Creek Indians who, after separation by Congress from the rest of the Creek Nation, have resided together for more than a century, shared a common leadership, and functioned as a cohesive community. A strong, permanent system of self-government has evolved. The leadership of the Poarch Band of Creeks continues to voice concern on a wide range of public issues regarding the well-being of the Creek people: S. 1224 is the most recent one.

Mr. Chairman, the tribal council of the Poarch Band of Creeks feel that the passage of S. 1224 with the proposed amendments and corrections would provide a resource that could be used to address two very pressing problems facing us in our efforts to provide services to our people:

(1) Education: Since the only school provided for our people for many years were poorly funded "Indian schools", maintained separately from other State schools, we find that seventy-five percent of the adult population of the Poarch Band of Creeks have, at most, an elementary education, and over forty percent have an annual income which is less than three-fourths that of the total American population. This severely limits the ability to provide our children with the opportunity for a higher education. We propose to use fifty percent of the proceeds of S. 1224 to establish a trust fund to support the education of our youth.

(2) Preservation of a historical site: Along with our effort to join the mainstream of American life there is a strong desire among our people to preserve and share our unique history. To this end our tribe has acquired titled to "Hickory Ground", one of the most important Creek historical sites. We propose to use fifty percent of the proceeds of S. 1224 to preserve and to present to both Indian and non-Indian this unique and historical site.

Mr. Chairman, Select Committee, again, I propose that the above stated amendments and corrections be included in the revised language of S. 1224.

I'd like to take this opportunity to commend the Muscogee (Creek) Nation of Oklahoma for their proposed plan for the distribution of their share (81.6196 percent) of this award. Their foresight to allocate the principal of this award for investment only and use the interest for designated areas of need will serve the Oklahoma Creeks well.

Also, I'd like to express appreciation to the distinguished Senators from Oklahoma, their staff; Senator Denton and staff; and you, the Senate Select Committee, for continued support of the Poarch Band of Creeks.

Thank you.

Senator ANDREWS. Thank you, very much.

Now, Mr. Fife, I do not have any questions for you. You did a great job in your original testimony. I would like to congratulate you and your tribe for what the committee thinks is a wise decision in wanting to use these funds for tribal program purposes. It gives a great deal of credence to your testimony. Thank you both, very much.

I have a copy of a summary of the Poarch Band of Creeks' petition for acknowledgement filed with the BIA. Without objection, I will place that in the record at this point.

[The summary follows:]

A SUMMARY OF THE POARCH BAND OF CREEKS' PETITION FOR ACKNOWLEDGEMENT FILED WITH THE BUREAU OF INDIAN AFFAIRS

The Poarch Band of Creeks petition for federal recognition was initially reviewed in June of 1980 for obvious deficiencies and significant omissions. Information was found to be lacking that demonstrated the band met criteria 54.7 (b) and (c). Criteria 54.7(b) requires: "Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific

area." Criteria 54.7(c) requires: "A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present."

Supplemental information was provided to the Federal Acknowledgement Office in January 1981, that offered further evidence that the Poarch Band of Creeks meets the criteria.

However, the historic record concerning the Poarch Creeks is extremely limited. One additional documentary source was offered that referenced the Poarch Band as an identifiable, separate population of Creek Indians. This was a letter from a Robert M. Cherry who had been employed to advertise and let a contract for the removal of additional Creek Indians remaining in Alabama. In a letter dated July 11, 1845, Mr. Cherry inquired about the removal of the families residing in Baldwin County (now a part of Escambia County). This is the first mention of the Poarch Creeks following their migration to the southwestern part of Alabama that indicates a knowledge of the group by a documentary source.

In consequence of the outcome of the Band's dealings with the federal government over the past years, in light of research conducted in connection with the land claims case, in view of the results of independent scholarly investigations, in view of the results of research conducted specifically in support of efforts to obtain federal recognition, and in view of the self-evident fact of the present-day existence of the Poarch Band of Creeks as a geographically based, politically organized community, the Tribal Council believes firmly that the Poarch Creeks meet all seven Bureau of Indian Affairs criteria for federal recognition.

54.7(A) The Poarch Band of Creeks has been identified from historical times until the present on a substantially continuous basis as "American Indian" or "Aboriginal."

54.7(A)(1) The Poarch Band has been repeatedly identified by federal authorities as an Indian entity:

The Creek Nation and the Poarch Band of Creeks have had repeated dealings with the federal government.

The first federal treaty with the original Creek Nation was signed August 7, 1790. This treaty, the treaty of New York, Allied the Creek Nation to the United States.

In 1799, the United States appointed Benjamin Hawkins as U.S. Agent to the Creek Nation. That year Benjamin Hawkins met Lynn McGhee, an "upper Creek" who was one of the genetic founders of the present Poarch Band. Benjamin Hawkins wrote three letters in three months describing Lynn McGhee's good character and ability to act as Interpreter.

In the latter part of 1799, Benjamin Hawkins met another of the founding ancestors of the Poarch Creeks Sam Moniac (also spelled Monoc, Mad Nac, and Mac Nack).

The United States signed treaties with the Creek Nation and obtained more land from the Creeks. These treaties partially led to a split in the Creek Nation and eventually the Creek War of 1814–15.

The Creek Nation was forced to sign the Treaty of Fort Jackson in 1814. This treaty was signed by Friendly Creek Chiefs, Chiefs who had remained friendly to the United States during the War of 1812, under protest.

Between years of 1826, through 1832, the Creek Nation eventually, ceded all their land East of the Mississippi to the United States, and lead to the eventual removal of the main portion of the Creek Nation to what is now Oklahoma.

The 1814 Treaty of Fort Jackson allowed for each Creek Chief and warrior who had remained friendly to the United States and took an active part to take a square mile reservation, for the exclusive benefit of the person and their heirs. Two years later the treaty was amended to allow all Friendly Creeks regardless of participation to take a reservation. However, the amendment further allowed for the land to be held in trust only as long as the original inhabitant was alive and used the land.

Lynn McGhee, Semoice, Samuel Smith, and Susan Marlow, for differing reasons, were unable to take their allotments as originally provided. By Act of Congress, these individuals were allowed in 1836 to take reservation as the original 1814 Treaty of Fort Jackson. Because of the quality of the available land the 1836 Act was amended in 1837 to allow for reserving fractional portions of the land not to exceed 640 acres.

It does not appear Samuel Smith made a selection. Heirs of Semoice and Susan Marlow petitioned for and had the restrictions removed by legislative act dated August 16, 1852.

The next recorded contact the Poarch Creeks had with the Federal Government was in 1907 when many Poarch Creeks were led to believe they could share in an award made by the federal government to the Eastern Cherokees. Each application was denied as "Most of them state in so many words in their applications and in their testimony that they are Creeks . . ."

A suit was filed in May 1912 by the United States against the William M. Carney Mill Co. to receive compensation for timber removed from the McGhee grant land and damage caused to the land. A week following the suit an Act was passed by Congress "to relinquish, release, revise, and quit claim all rights, title, and interest of the United States of America in and to all lands held under claim or color of title by individuals or private ownership or municipal ownership, situated in the State of Alabama which were reserved, retained, or set apart to or for the Creek Tribe or Nation of Indians . . ."

The Department of Interior and the Attorney General concluded that the McGhee grant land was still federally protected because the Act pertained to purchasers of land and the heirs of Lynn McGhee still held the land. No further action was taken and the Carney Mill company was required to pay $2,000 of the $15,552 requested.

In 1920, the Department of Interior directed Escambia County, Alabama to cease its illegal taxation of the McGhee heirs on the Indian grant land.

Congress never enacted further legislation concerning the McGhee grant and Lynn McGhee's descendants continued to occupy the land. But in 1924, the Department of Interior issued a patent for the McGhee Grant lands.

In 1951, the Creek Nation East of the Mississippi moved to intervene in a suit brought by the Creek Nation of Oklahoma before Indian Claims Commission for recovery of damages as a result of the treaty of Fort Jackson. This intervention through an appeal to the Court of Claims was successful and award distributed in 1972.

Since 1971, the Band has received numerous grants and awards from the federal government for the conduct of social services. These grants and awards are ones that are not restricted to federally recognized Indians.

54.7(A)(2) The Poarch Band of Creeks has had a relationship with the government of the State of Alabama which is based on the State's identification of the band as Indian.

The Poarch Band of Creeks has generally turned to the federal government for any necessary assistance in addressing the economic or political concerns of the members. Because the federal government has usually responded to the critical problems of the Band, there has been very little motivation for the Band to establish a substantial relationship with the State of Alabama government.

The governor of Alabama has repeatedly sought the opinion on state legislation with respect to Alabama Indian affairs and assisted in its efforts to have the land surrounding the old Consolidated Indian School Building accepted by the United States in trust for the Band.

In 1978, the legislature created a Southwest Alabama Indian Affairs Commission with statewide responsibilities. This commission is composed of those members of the Tribal Council/Poarch Band of Creeks who live in Alabama.

The goal of the Tribal Council of providing for the welfare of the Poarch Band of Creeks has been supported by such state governmental agencies as the Alabama State Manpower Services Council, the Alabama Development Office, the Alabama Historical Commission, the Alabama Women's Commission, and the Department of Industrial Relations.

54.7(A)(3) The Poarch Band of Creeks has had dealings with county and local governments based on the group's Indian identity.

The Poarch Band's early period of isolation and discrimination discouraged contacts with neighboring white communities or their governments. This is no longer the case, however, and recent dealings with city and county governments indicate a growing relationship of cooperation and mutual support. As evidence of this relationship, the mayor of Atmore, Alabama, the Chairman of the Escambia County Commission, and the Chairman of the local Community Action Corporation have all expressed their acceptance and support of the Tribal Council's efforts in providing for the needs of the Poarch Indian Community.

54.7(A)(4) Members of the Poarch Band of Creeks are identified as an Indian identity in the records of courthouses, churches, and schools.

The Poarch Band has had extensive dealings with the Escambia County Board of Education and various churches, especially since the issuance of the 1924 patent on their lands. The records of these organizations consistently indicate the Indian identity of the Poarch community. The marriage records of the Escambia County Courthouse in Brewton, Alabama, also identify members of the Poarch community as Indian.

The Board of Education for Escambia County, show appropriations for teachers' salaries at Indian schools in the Poarch community. After 1939 there was a single "Indian Consolidated School." The Board purchased land from the Episcopal Church for construction of a new school for the Indian children. The new school was built after the Indians protested the condition of the building and two of the teachers.

The Indian Consolidated School was closed in 1970. Since that time the former school building has been used as the Tribal Center for the Poarch Band of Creeks.

54.7(A)(5) The Poarch Band has been identified as an Indian entity by anthropologists, historians, or other scholars.

After the removal period, in the 1830's, historians and anthropologists concerned themselves primarily with the Creek Nation of Oklahoma. Very little was written about the eastern Creeks until 1941 when Frank Speck visited the Poarch Band in Alabama. Since then other historians and anthropologists have studied and written about this unique Indian community.

An annotated list contains twenty historical and anthropological sources that identify particular known ancestory of the present band as members of the original Creek Nation, and those which identify the present land as an Indian entity.

54.7(A)(6) The Poarch Band of Creeks has been repeatedly identified as an Indian entity in newspapers.

A representative sample of newspaper articles mentioning the Poarch Creeks contains 43 listings dating from 1910 to 1979. This listing is not intended to be complete but rather to show the extent and nature of the coverage the Band has received in newspapers. There has been numerous mentionings following 1979.

54.7(A)(7) The Poarch Band of Creeks has repeatedly been identified as Indian and dealt with as an Indian entity by recognized Indian tribes and national Indian organizations.

The Poarch Band of Creeks has been repeatedly identified as an Indian entity by recognized tribes and national Indian organizations. Aside from their close working relationship with the Creek Nation of the Indian Territory during their case in the Indian Claims Commission, the Band is a member of the National Congress of American Indians, (Chairman Tullis is presently an officer of NCAI), the National Indian Lutheran Board, the United Indian Planners Association, the Indian and Native American CETA Coalition, and the Southeast Region Indian Manpower Planners and Administrators. The Band has also participated in the 1972 Eastern Indian Conference and the 1961 American Indian Chicago Conference.

These activities indicate that the Poarch Band has had repeated dealings with other Indian tribes and national organizations based upon their identification of the Band as an Indian entity. The Poarch Band of Creeks therefore meets the requirements of 54.7(A)(7).

54.7(B) A substantial portion of the Poarch Band of Creeks inhabit the area immediately surrounding Poarch, Alabama, and lives as a community which is viewed by others as American Indian and distinct from other populations.

The historic core of the present-day Poarch Band consists of four settlements at Head of Perdido, Hog Fork, Bell Creek, and Huxford. Head of Perdido and Hog Fork are still active. Bell Creek was abandoned, but the locale is very near the present settlement of Poarch Switch, an Indian Community that developed in the 1920's and 30's.

An analysis of U.S. Census schedules from 1850 to 1900 shows that the Indian population grew from 88 in 1850 to 170 in 1900. A more complete analysis of the date demonstrates that the ancestors of the Poarch Band lived in close geographical proximity, throughout the late 19th century, in essentially the same areas in which the founding families of the Band established themselves in the 1840's and 50's.

The Poarch Band is a unique community of Creeks east of the Mississippi which has been drawn together by the combined forces of history, common heritage, kinship, geography and social institutions such as schools, churches and government.

54.7(C) The Poarch Band of Creeks has maintained political authority as an autonomous entity over its members throughout history.

Before the early part of this century when various churches sent their clergy and missionaries to Poarch, there was very little official contact between the Poarch Creeks and local whites. For this reason there was little need for formalized leadership and little documentation concerning international affairs. Recent oral history accounts given by the older members of the Band indicate that each of the Indian hamlets which originally developed at Headapeada, Huxford, Bell Creek, Hog Fork and later, Poarch Switch recognized their own informal leaders, the "older heads" of each hamlet. Some of these "older heads" occupied formal positions in Hamlet, church and school as deacons and trustees, respectively, beginning the early decades of this century and afterwards.

During the Removal Era the McGhee grant lands served as a land base for those Creeks who wished to remain in Alabama. Federal Homestead Certificates offer evidence of the expansion of the community around the McGhee grant by such Creek descendants as the Gibson, Rolin, Colbert, and Lomax families as early as 1854.

The first formal leaders of the Poarch Band emerged in response to the growing concerns of many community members over a poor quality of education their children were receiving in the county-run Indian school. One parent organized a boycott of the Indian school and another blocked the passage of the white school bus through the Poarch Community until the driver allowed the Creek children to board. With the support of these parents and other Poarch Creeks, Calvin McGhee initiated a lawsuit against the county board of education in 1947.

Despite a concerted effort very little written documentation of leadership in the Poarch Creek Indian community for the period "between the settlement of the original families and approximately 1900" has been discovered. The most likely reasons for this paucity of documents are:

(1) The Poarch Creeks were rather isolated and had few, if any, occasions for corporate dealings with outsiders;

(2) They may have relied upon non-Indian intermediaries (including married-in white men and assimilated descendants of early mixed-blood families in the area) in dealing with local authorities;

(3) Internal dispute settlement among the Indians themselves was just that, internal, and left no written records; and

(4) The Poarch Creeks were largely illiterate (Paredes 1980:182).

Morecver, if oral accounts of life in the early 20th century may be extrapolated back into the 10th century, there were no recognized positions of leadership, only leaders. Such leaders led by virtue of their seniority, experience, and forcefulness, and many decisions were made on an informal, and even unspoken, consensual basis. Nonetheless, the available documentary evidence, amplified by oral history accounts, is sufficient to trace the outlines of Poarch Creek Indian political authority and leadership from the time of the removal into the early 20th century.

During the earliest phases of the separation of the Poarch Creeks as a distinct group the ancestors of the Band remained under the jurisdiction of the Creek Nation. Individuals who figure in the late 18th and early 19th century ancestry of members of the Poarch Band are listed in the Creek census of 1831; for example, David Tate and Charles Elliot are shown as members of Autauga Town and Samuel Manack is listed for Tuskeega (sic) town (Persons and Abbott, 1963). The names of Lynn McGhee and Semoice cannot be identified with certainty in the 1832 census, but this is not surprising given the evidence that a number of heads of households were omitted. On September 17, 1834, the Head Chiefs of the Lower Creeks wrote to the Secretary of War complaining of omissions from the 1832 census explaining, "some of our people are hunting and instead of spending their (sic) time at the whiskey shop go into the woods and hunt for months at a time—by so doing procure meat for their (sic) families—their names were not put down" (Creek Chiefs 1959a:0610), Appendix 19. On September 4, 1835, another set of chiefs wrote the Secretary of War regarding the Treaty of 1832, prospects for emigration to the West, omissions from the 1832

census, and other matters, and they stated, "we wish information of a balance due certain Creek Indians McNack and others for spoliations done them during the Creek War."

54.7(D) Present governing document.

The Poarch Band of Creeks has adopted By-Laws that are presently used to govern the actions of the Tribal Council. A constitution is in the process of being drafted that will be submitted for ratification by the tribe at the next general election.

54.7(E) Tribal rolls.

The Tribal roll of the Poarch Band of Creeks and the Individual History Charts for each of the members have been previously submitted to the Recognition Committee under separate cover.

54.7(F) The membership of the Poarch Band of Creeks is composed principally of persons who are not members of any other North American tribe.

All of the current members of the Poarch Band of Creeks are descendants of the original Creek Nation who remained in Alabama after the Removal Era. The Band is a separate entity from the Creek Nation of Oklahoma and none of the members of the Poarch Band belong to that tribe or any other North American tribe.

54.7(G) The Poarch Band is not, nor are its members, the subject of congressional terminated or forbidden the Federal relationship.

Congress has never expressly authorized the termination of federal relationships with the Poarch Creeks which have existed since historical times. The issuance of a patent on the federal grant lands which the Band currently occupies was never authorized by Congress either expressly or impliedly. As discussed in Section A, supra, that patent was wrongfully issued on the basis of an erroneous administrative interpretation of the Act of March 3, 1817.

Senator ANDREWS. Now our next witness and last witness is Maurice Chouteau, chairman of the Kaw Tribe of Oklahoma of Kaw City. He is accompanied by G. William Rice and Lynette Johnson, business development specialist, Kaw Tribe of Oklahoma, Kaw City, Okla. Let me encourage you to summarize your statement. It will appear as though you have given every word of it, and we can include it in the record.

STATEMENT OF MAURICE CHOUTEAU, CHAIRMAN, KAW TRIBE OF OKLAHOMA, KAW CITY, OKLA.

Mr. CHOUTEAU. Mr. Chairman, I thank the committee for the opportunity to testify in support of Senate bill 1168, which Senator Boren introduced by request and Senator Nickles has agreed to cosponsor, on behalf of the Kaw Tribe of Oklahoma. Before I begin my testimony, with your permission, I would like to introduce the two people who accompany me. May I present Mr. G. William Rice, counselor for the Kaw Tribe, on my right here, and Mrs. Lynette Johnson, business development specialist for our tribe, who did the background research on this matter.

I would also like to present to your committee a copy of a prepared statement of the historical background of this bill and have it recorded as part of the record.

Senator ANDREWS. We have that and it is. I would like to make, before I ask any questions, as part of the record, a letter from the Department of the Army to Senator Don Nickles dated February 25, 1983, and a letter from the General Services Administration to Senator David Boren dated February 19, 1983, both of which reflect the current status of this property.

[The letters follow:]

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., February 25, 1983.

Hon. DON NICKLES,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NICKLES: This is in further reply to your recent inquiry on behalf of M. M. Chouteau, Chairman, Kaw Tribal Business Committee, Kaw Tribe of Oklahoma, concerning a proposal by the Kaw Tribe to exchange lands at Kaw Lake, Oklahoma.

I have reviewed the material submitted to you by the Tribe and the report submitted by the Division Engineer, U.S. Army Engineer Division, Southwestern, Dallas, Texas.

The interests of the Kaw Tribe in approximately 33 acres located in the Kaw Lake Project area were acquired by the Government through four civil actions under authority of the Flood Control Act approved October 23, 1962 (Public Law 87–874), which act authorizes the construction of Kaw Lake, Arkansas River, Oklahoma. Since title passed to the United States, in accordance with the Declaration of Taking Act (40 U.S.C. 258a), final judgments entered and compensation paid to the former owners, we do not believe there is now any land owned by the Tribe which could be the basis of an exchange.

A brief summary of the actions relative to the excess land which the Kaw Tribe is trying to obtain title to should clarify the Corps' position. On December 10, 1975, the Department of the Interior was granted a permit for the use and maintenance of 15 acres of land and the relocated Kaw Council House by the Kaw Indian Tribe for tribal purposes.

Subsequent to the issuance of the permit, the District Engineer, Tulsa, Oklahoma, received an expression of interest from the Kaw Indian Tribe in acquiring the 15 acres under permit, plus additional adjacent land for the establishment of a land base for the Tribe. Thereafter, an area totaling 132.5 acres was reviewed for project needs and determined excess to our requirements. The excess land was then reported to the General Services Administration for further Federal utilization or disposal pursuant to the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377).

The Kaw Indian Tribe pursued the transfer to them of 132.5 acres of land under the provisions of Public Law 93–559, approved January 2, 1975. However, the Department of the Interior, Bureau of Indian Affairs, determined that the Kaw Indian Tribe did not qualify for the transfer of lands under the public law because the land was not held in trust for the Indians when acquired by the United States and it is not contiguous to real property presently held in trust by the United States for the Tribe.

When it became evident that the Tribe would not qualify for the transfer of the property under Public Law 93–599, the District Engineer instituted action to withdraw the property from excess status. This was done to allow the Tribe the necessary time to explore various methods of qualifying for and accomplishing a transfer, or to qualify them to purchase the land.

On May 16, 1980, after having been advised by the Tribe that a solution had been reached with the General Services Administration, the 132.5 acres were resubmitted as excess. The solution was that the General Services Administration would sell the Tribe one acre of land which would be placed in trust with the Bureau of Indian Affairs, thereby allowing the Tribe to qualify for transfer of any adjacent excess land. The Division Engineer advises that this matter has not been concluded to the satisfaction of the Kaw Indian Tribe and that the 132.5 acres remain under the accountability of the General Services Administration.

The Department of the Army has no authority to transfer or convey the property directly to the Tribe. The Tribe was continually advised that all final actions concerning transfer of the property would be based on decisions by either the Bureau of Indian Affairs or the General Services Administration.

The Corps of Engineers will continue to cooperate with the Kaw Indian Tribe and the General Services Administration.

Sincerely,

DAVID C. GRAY,
Director of Real Estate.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., February 19, 1983.

Hon. DAVID L. BOREN,
U. S. Senate,
Washington, D.C.

DEAR SENATOR BOREN: Thank you for your recent letter concerning the interest of the Kaw Tribe of Oklahoma in acquiring 132.5 acres of land known as the Kaw Lake Project, Kay County, Oklahoma.

On December 18, 1981, the Kaw Indian Tribe filed a suit with the U.S. District Court of Oklahoma for declaratory and injunctive relief requiring the General Services Administration (GSA) to negotiate the sale of a 37.94-acre portion of the property. On August 25, 1982, the court issued an order in favor of the Government which states that as a matter of law GSA may not recognize the Kaw Tribe as an entity with which it may negotiate pursuant to 40 U.S.C. 484 (e) (3) (H).

Since the court order has made it clear that we cannot negotiate the sale to the Tribe, we have tentatively scheduled the property for public sale in April 1983. The Kaw Tribe would, of course, be welcome to participate in such a sale.

We hope you can understand our position in this matter.

Sincerely,

RAY KLINE,
Deputy Administrator.

Senator ANDREWS. The GSA letter reflects the intent to offer the property for public sale. What is the financial posture of the Kaw Tribe at this time?

Mr. CHOUTEAU. It is very nil. We have no resources at all.

Senator ANDREWS. Well if you are even with the board, you are a lot better off than the Federal Government. Your statement indicates that there are about 800 members of the Kaw Tribe. How many of these members live in the area where this property is located?

Mr. CHOUTEAU. Conservatively, sir, around 350 members.

Senator ANDREWS. Now this bill, as I understand it, addresses only the surface rights to the property. It is my understanding that the Corps of Engineers is also declaring the mineral interest to be excess or surplus. To your knowledge, are there any mineral producing capabilities in this land?

Mr. CHOUTEAU. No sir.

Senator ANDREWS. If this property is taken in trust for the benefit of the tribe, what use would the tribe make of the property?

Mr. CHOUTEAU. Our No. 1 priority would be leasing of the land until the lease expired. No. 2, a high priority of ours would be a tribal housing addition on the acreage. No. 3, would be the process of looking at the feasibility of different types of economic development projects that we might undertake.

Also, if the land is transferred to the tribe, the lower 15 acres of the 132 acres where the General Counsel house now is located, there have been expression of some of the tribal members that they would like to have a cemetery located there and use the General Counsel house as a chapel.

Senator ANDREWS. Thank you very much. Let me assure you that we intend to have the Government submit its statement which is not ready at this time. It should be shortly after the Memorial Day recess. I imagine this would be about the middle of June. We will call them up and hear their testimony to complete the record and move on with the consideration of the bill.

[The prepared statement of Maurice Chouteau follows:]

PREPARED STATEMENT OF MAURICE CHOUTEAU, CHAIRMAN, KAW TRIBE OF OKLAHOMA, KAW CITY, OKLA.

In northern Oklahoma in 1975, the Corps of Engineers flooded the land and created Kaw Lake. In order to accomplish this, they condemned all of the remaining 53 acres of tribal land of the Kaw Tribe. This action was the culmination of takings and removals involving the Kaw Tribe from their first official recognition in 1825 when they were recorded as owning in excess of 2 million acres across northern Kansas.

It is true that these last condemnations transferred a sum of money to the tribe for our land. The Corps moved the old Washunga cemetery. They even moved the old Council House, stone by stone, reconstructing it at a cost of over $200,000! What they didn't do for the tribe was replace any of the trust land. This they took . . . all of it.

At that time and since, there has been an understanding between the Corps and the Kaw Tribe that the tribe would receive land in exchange for that which was condemned. For over eight years the tribe has pursued one time-consuming and costly effort after another seeking to redeem administratively the promise that was made when their land was taken. Evidently no administrative recourse is possible.

During these years, the tribe has been privileged to have the assistance and involvement of our Oklahoma Senators, Senator David Boren, and more recently, Senator Don Nickles. They are aware how persistently we have pursued a just conclusion to the problem. The bill before this committee now, S.1168, is an attempt to affect a just settlement to a problem which has eluded all other methods of solution.

The Corps did not intend to leave the Kaw Tribe without land from which to administer the affairs of our people. They planned from the first to give the tribe deed in trust to the land where the Old Council House was moved. In the preliminary case report which was subsequently adopted, in July, 1973, the Chief of the Corps' Planning Branch recommended:

"The building (Council House) could be relocated to an area (to be specified) of Government owned property above the flood control pool elevation on the north edge of Washunga Bay public use area. The administrative control of the property and the relocated structure could be transferred to the Bureau of Indian Affairs and held in trust for the Kaw Tribe. The cost would be less than for any of the other alternatives because of the short transportation distance involved . . . (this is the most viable alternative from an economic, social, and practical point of view to mitigate the adverse effect. There is concurrence by the Kaw Tribal Council and the State Historic Preservation Officer in this plan. This is the alternative which the Corps recommends."

I believe that this clearly presents the original situation. In this plan which was adopted, the Corps intended that "The administrative control of the property and the relocated structure could be transferred to the Bureau of Indian Affairs and held in trust for the Kaw Tribe." It also shows that the Corps had contacted the tribe and had their "concurrence" in this "most viable alternative."

In proceeding, the Corps guided a delegation of our tribal leaders over the land to select the site where the Council House would be re-located. Then at considerable effort and expense, the administrative building was relocated. Also at this time, several condemnations were carried out to transfer the tribe's land to the government. The condemnations were completed uncontested, but I think it is fair to point out that one of the reasons they were uncontested was because the tribe had every confidence that the Corps would fulfill their plan and transfer the Council House land to them, safeguarding their administrative land base. But the land was never transferred in trust as the plan specified.

Instead, an "indefinite permit" was issued which allowed the tribe to use the land. "Indefinite," that is, until the Corps wants to revoke it. Now the Corps has declared this land surplus to the G.S.A. And the G.S.A. is in the process of disposing of it. Quite frankly, unless something is done, we will find our office trailers out on the road. And quite frankly, we don't have the money even to move them that far!

Let me stress at this point, that the tribe never accepted this "indefinite permit" instead of land in trust. The Superintendent of our Pawnee Agency Bureau of Indian Affairs did this for us. But even he did not realize that this would mean that the tribe would never gain the land in trust. Let me quote from the letter

he sent to the Corps: "We have reviewed the permit and the terms thereof are satisfactory to the Bureau of Indian Affairs. However, our acceptance of the permit does not preclude the Kaw Tribe from exercising their right to request that said land be conveyed to them at a later date.

For eight years, this is just what the tribe has been trying to do. One of the original condemnations made of our land provided for an exchange of our old cemetery land for our new. (This land, incidentally, was for some reason, not transferred to the tribe, but to a "cemetery association", even though the original land was tribal trust land.) The Corps of Engineers has the right by law to "exchange land or other property of the Government for private lands or property." This is what we expected would be done to bring about the exchange of trust land for our Council House.

We have since found out that the Corps of Engineers planned instead that the tribe attempt to qualify for the surplus land now in question under Public Law 93-599. Briefly, this law provides that an Indian Tribe in Oklahoma can claim surplus government land under two conditions: (1) If the government originally acquired the property from the Tribe: or (2) If the surplus land borders on land the Tribe presently holds in trust.

Well, the government didn't get the land from us originally, and because they condemned every piece of property we had, we certainly don't have land bordering on this surplus piece. So we don't qualify under this law, and the single plan the Corps had for fulfilling their promise is ineffective.

This is not to say that we have not tried numerous means to qualify under this law. We attempted to buy an acre of the surplus land, but the G.S.A. deemed us ineligible, and the courts agreed. We argued that perhaps the "permit" we were given constituted a form of "land held in trust." The courts thought not. We tried to purchase some land bordering on the surplus from neighboring landholders. They wouldn't sell. We pointed out to the Corps that the legislation which gave the tribe the original land in the first place specified that it could only be disposed of by "Act of Congress," and that the condemnations they had made were in violation of this. But these and other approaches, even with the Corps' avowed support and best wishes, have repeatedly met with failure.

Now we are before your committee seeking a just legislative resolution to our problem.

Our tribe is small, just over 800 members. It is poor. The only other trust land we have is 45 acres which we acquired only last November to use for construction of some tribal housing. But this land is across the lake, 20 miles away, far from the original land of our people. The land which bill S. 1168 is requesting for us lies close to our former land, within our old reservation boundaries. Here we administer our tribal affairs from a small group of office trailers on a hill overlooking Kaw lake. Our Council House is here. Our Pow-Wow grounds are here. Onr Economic Development project is here. Our roots are here. So although it is this land that has meaning for us, that we have invested with our hopes for our future, it does not belong to us.

This bill is the means to remedy this. It is the means to fulfill a promise which we have been told for so many years cannot be fulfilled. We are not the tribes of old days, and this is not the government of old days. We believe the days of taking away land are gone. We believe the days of broken promises are gone.

We ask your favorable consideration.

Thank you for your attention and this opportunity to speak.

Historical Background of the Legislation, S. 1168

Originally the Kaw Tribe was located mainly in northern Kansas where its influence spread over two million acres. Through a series of disadvantageous treaties, its lands dwindled until, on June 5, 1872, the tribe sold its land in Kansas and resettled on a reservation in Oklahoma in an area which came to be the part of Kay County east of the Arkansas River. The tribe purchased this land from the Osage Tribe, who had acquired it from the Cherokee. All of this land was held in trust by the United States for The Kaw Tribe.

On July 1, 1902, Congress passed a bill (32 Stat. 636), which, among other things, allowed the Kaw Tribe to allot their new land to members of the tribe. All of this land, however, was not allotted to individuals.

The tribe transferred 160 acres of their reservation, which was reserved from allotment, to the U.S. Government, who agreed to maintain a school and

agency buildings there for at least ten years. Although the term "ceded" was used, the tribe received no compensation for this cession, and it is apparent that the land was set aside for Indian purposes by the Congress. The land and improvements on the 160 acres was to be subject to final disposition by Congress. The 1902 bill also allowed twenty acres of land to be reserved from allotment to be used as a cemetery. This was exempt from taxation and was carried on the records of the Bureau of Indian Affairs as land held in trust.

There was also eighty acres reserved from allotment which was to be divided into town lots and sold at auction, with the proceeds going to the tribe. Any unsold lots were to be exempt from taxation and the title was to remain in trust for the tribe.

In 1910, less than ten years after this agreement, the government discontinued the boarding school which they had been maintaining on the school land instead opened a small day school. Records located in the Western History Collections of the University of Oklahoma at Norman, Oklahoma, reveal that although the Commissioner of Indian Affairs assured three tribal members in 1914 that the one-teacher day school had been maintained until October, 1912, no financial or personnel action pertaining to the school was recorded later than January, 1912.

On April 29, 1922, the 160 acres of school reserve land was reduced when Congress passed a bill (42 Stat. 1589, Sec. 7) allotting 150 acres of that land to two tribal members, Addie May and Archie William Auld, who had somehow been overlooked in the original 1902 allotment. This left ten acres of school reserve land still set aside by Congress for the Kaw Tribe.

On April 28, 1924, Congress passed another bill (43 Stat. 111, 25 U.S.C. 401) which allowed the Secretary of the Interior to lease the remaining school reserve land and the cemetery land for mining purposes. The bill stipulated that the proceeds of the leases were to go "for the use and benefit of the members of the Kaw Tribe."

As the tribe entered the 1950's, there were three parcels of land on record for the tribe:

(1) Twenty acres of cemetery land, of which seven acres was in use and thirteen acres was being leased for farming, the proceeds going to the Kaw Cemetery Association for the maintenance of the cemetery. This was land held in trust and was on record with the Bureau of Indian Affairs, although the Bureau didn't know the land was being leased until the early 1960's.

(2) Three of the original eighty acres of town lots were still unsold, and although the land was in trust status, the Bureau of Indian Affairs was not aware of the fact of their existence until the Corps of Engineers raised questions regarding the titles in 1967.

(3) The Bureau of Indian Affairs carried the ten acres of remaining school reserve land on its records as government owned, although it had specifically been set aside by Congress for the use of the Kaw Tribe and the 1924 Act had clearly confirmed the equitable interest in the mineral rights of the property for the Kaw Tribe. This was the land the old Council House was on, and it was used for meetings occasionally during the year.

On May 14, 1954, the Secretary of the Interior requested that the Bureau of Indian Affairs Area Offices dispose of excess government land. This was to be done under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377). The Assistant Commissioner of Indian Affairs approved the particular disposition of the Kaw School reserve land on April 28, 1955, and on May 6th, the Area Director at Anadarko declared the property excess to the General Services Administration.

Two problems immediately arose. Because of the 1924 Act, there was a question as to whether authority existed for disposal of land in which an Indian tribe held such an equitable interest. In a letter to the Commissioner of Indian Affairs, the Associate Soliciter, Indians, expressed his opinion that such authority did not exist. Also, because Congress had recently awarded compensation to the Kiowa, Comanche, and Apache tribes when their school reserve land at Ft. Sill, Oklahoma, which they had ceded to the government was sold, the question arose as to who should receive the funds from such a sale if it could indeed be made.

As a result, after first withdrawing only the mineral interest of the school land, on December 23, 1955, the Commissioner of Indian Affairs directed the Anadarko Area Director to withdraw the entire declaration of excess and await the outcome of proposed legislation. The Area Director immediately wired the GSA withdrawing the property, even though bids had been submitted on

November 8th and the successful bidder notified—a position of considerable embarrassment.

The proposed legislation would be simple—it would transfer title of the cemetery land in fee simple to the tribe, taking it out of trust status, and allow the sale of the ten acres of school land, directing the money to go to the tribe on a per capita basis.

But there were three underlying objectives that would also be accomplished: (1) The Fort Sill precedent would be acknowledged, (2) The land would be disposed of by Act of Congress as stipulated in the 1902 Act, and (3) It would be terminal legislation for the tribe, effectively ending the trust relationship between the United States and the Kaw Tribe.

Meanwhile, the GSA had not totally withdrawn the land from excess as directed. What they had done was to hold the money submitted by the successful bidder on deposit and await the outcome of the special legislation. When the bill did not pass in the 1955–56 session of Congress, the Anadarko Area Director and the Real Property Disposal Officer of GSA met in Dallas on October 18, 1956 to decide how to proceed in the absence of special legislation. Without any lawful authority, they decided to go ahead and sell the surface rights to the 9.05 acres of the 10, reserving the mineral rights for the tribe, and also totally withdrawing from excess the 0.95 acre on which the Kaw Tribe's Council House stood. Needless to say, this was not according to the directive from the Commissioner of Indian Affairs. He had indeed considered this course of action in withdrawing only the mineral rights on December 2nd, but had considered and withdrawn the entire property three weeks later. The representatives of the Bureau of Indian Affairs and the GSA ignored his wishes.

They did, however, propose to again seek special legislation which would: (1) transfer title of the twenty acres of cemetery land to a tribal association, taking it out of trust status. (2) turn over to the tribe the proceeds from the sale of the 9.05 acres on a per capita basis, and (3) turn over to a tribal association the deed to the 0.95 acres. Their sale of the 9.05 acres was carried out in sales to two couples, the Liles and the Wilsons in November, 1956, and September, 1957, respectively. The combined total of the sales was $2,265.39.

The corrective legislation was never submitted. Copies and revisions were passed back and forth and for over a decade, bills were recommended and analyzed, but for a variety of reasons, legislation was never introduced, and the solution worked out by the Bureau of Indian Affairs was never followed—they simply sold the lands, took the money, and the tribe was entitled to the proceeds, and setting things straight was their continuing intention.

One reason the legislation was never introduced was because these officials improperly failed to recognize the Kaw Tribe as a "tribal entity" to which the government could transfer the titles of the proposal since the tribe was not organized pursuant to the Oklahoma Indian Welfare Act. Another reason was the approach of the Kaw Lake Reservoir Project which should necessitate that all the lands in question be acquired by the Corps of Engineers addressed the acquisition of the various lands held on record by the Bureau of Indian Affairs for the Kaw Tribe.

The Wahsunga Town lots, held in trust by the United States for the Tribe, were purportedly taken by condemnation by Civil suit No. 70–211, filed on July 8, 1971 in the court for the Western District of Oklahoma. These were Tracts No. 515, 520, 530, 533, 535, 536, 557, and 573, containing 3.00 acres. The total amount of the award was $1,000, which was deposited for the tribe. The Kaw Tribe was named as a Defendant in this action.

The cemetery land, also held in trust, was purportedly taken by two separate condemnation suits. CIV–72–66, filed on February 4, 1972, took 14.25 acres for $7,645. This was deposited to the credit of the tribe. CIV–72–528 purportedly took 5.75 trust acres in exchange for 6.00 acres which was conveyed by Quitclaim Deed on November 30, 1971 from the Secretary of the Army to the Kaw Tribe. The graves of the old Kaw cemetery were moved to the new six acres site near Newkirk by the Corps of Engineers.

The Corps also attempted to acquire the rights to the old ceded school reserve land in several transactions. Any rights to the surface property of the Liles was acquired by Quitclaim deed on August 9, 1968 for $3,425, and the rights of the Wilsons to the property were acquired on January 27, 1969 for $1,340. CIV–75–0102–C, filed February 4, 1975 purportedly condemned the ten acres of ceded school reserve land. $240 was awarded for the taking of the mineral rights, but

was never deposited to the Kaw Tribe. A jury trial was called for the final judgment on July 19, 1977, and the parties were notified, but the tribe was not represented, due to the fact that the notice was sent to the man who was tribal chairman when the suit was initiated in 1975, and that man was no longer tribal chairman. The Bureau of Indian Affairs also received notification of the final judgment proceedings, but neglected to appear or otherwise attempt to represent the tribe.

The presence of the Kaw Tribal Council House on the .95 acres of school reserve land which still remained on record for the tribe presented a unique problem because the Council House had been placed on the National Register of Historical Places in June, 1973. Eventually, it was decided to dismantle the Council House and move it to another location, to be chosen by the Tribal Council. The Council did choose a site and was led to believe by the Corps of Engineers that title to the new site would be transferred to the tribe in trust. Naturally the tribe expected their relinquishment of all tribal land to result in at least a small amount of trust land to serve as a base for tribal administration. It was not to be.

On September 22, 1975, the Corps abruptly decided that the title could not be transferred in trust for the tribe. Instead, a "permit" was issued for an "indefinite term". This meant that the tribe, instead of having the new 15-acre tract in trust status, were only "permitted" to use the land—a status not at all parallel to the status of the old land and certainly not in accord with what they were led to expect. Indeed, the Corps regulations specified that "indefinite" permits were not to be granted, because they were "considered tantamount to a transfer."

On September 22, 1975, without consulting the tribe, the Superintendent of the Bureau of Indian Affairs at Pawnee "accepted" the permit on behalf of the tribe, carefuly avoiding the term "approve," since the issuance of the permit was essentially contrary to all agreements up to that point and in fact, left the tribe landless. In his letter, however, he was careful to point out that "our acceptance of the permit does not preclude the Kaw Tribe from exercising their rights to request that said land be conveyed to them at a later date."

The tribe immediately began to seek means whereby the land could be conveyed to them. In December, 1975, a large delegation met with the Corps of Engineers in Tulsa. The tribe met with the Corps again in August, 1977 and after this meeting in November, 1978, the Corps declared surplus 132.5 acres of land which included the fifteen acre parcel permitted to the Kaw Tribe. The District Engineer for the Corps would maintain a year later that the Corps assumed during the disposal process that the Kaw Tribe may have had some right of interest in a portion or all of this surplus property by virtue of Public Law 93–599.

The fact that the Corps intended that the tribe be able to lay claim to this 132.5 acres is borne out by the fact that the Corps Realty Officer forwarded a copy of Public Law 93–599 and exhibits outlining the legal precedents of such an acquisition to the Superintendent of the Bureau of Indian Affairs in Pawnee in November, 1978 at the time the surplus was declared.

Mr. Tony Sousa, Chief of Management and Disposal Branch of the Corps in Tulsa went so far as to say to a tribal delegation on November 10, 1982, that the Corps intended the tribe to lay claim to the anticipated surplus from the time the Corps issued the original permit in 1975.

But the Public Law itself stood in the way of the tribe's claiming the land. Public Law 93–599 40 U.S.C. Sec. 483(a)(2)(2) reads as follows:

(2) The Administrator shall prescribe such procedures as may be necessary in order to transfer without compensation to the Secretary of the Interior excess real property located within the reservation of any group, band, or tribe of Indians which is recognized as eligible for services by the Bureau of Indian Affairs. Such excess real property shall be held in trust by the Secretary for the benefit and use of the group, band, or tribe of Indians, within whose reservation such excess real property is located *Provided*, That such transfers of real property within the State of Oklahoma shall be made to the Secretary of the Interior to be held in trust for Oklahoma Indian tribes recognized by the Secretary of the Interior when such real property (1) is located within boundaries of former reservations in Oklahoma as defined by the Secretary of Interior and when such real property was held in trust by the United States for an Indian Tribe at the time of acquisition by the United States, or (2) is contiguous to real property presently held in trust by the United States for an Indian Tribe.

Because the land declared surplus by the Corps of Engineers was not acquired

by the government from the tribe, but from non-Indians, the tribe did not qualify to lay claim to the surplus property under proviso (1), and because the Corps had purportedly condemned their original landholdings, traded for cemetery land off the tribe's former reservation, and issued a permit instead of land in trust as the tribe was led to expect, the tribe apparently did not qualify under stipulation (2).

The Corps may have had the right intentions in expecting the tribe to lay claim under Public Law 93–599, but it was the nature of their own takings in the face of imminent innundation, and lack of adequate planning and supervision by the United States as the Tribe's trustee, that had left the tribe with land and conveyances which disqualified them from claiming the surplus. The tribe sought the help of their federal legislators in their attempts to lay claim to the property, and in November, 1979, Senator Boren succeeded in persuading the GSA to sell the tribe one acre of the surplus land, which, taken in trust, would have qualified the tribe to lay claim to the remainder. But, for some reason, the GSA reneged on this agreement.

In 1982 the tribe brought lawsuits against the Department of the Interior and the GSA, claiming that the land which the tribe received a permit to use was actually held in trust for the tribe by the United States. In August, 1982, the lawsuits failed.

In November, 1982, after an exhaustive examination of the records of the land dealings, the Tribe approached the Corps of Engineers, proposing an administrative transfer of title to the land. The research, largely described here, showed a number of discrepancies in the acquisition of tribal land over the years since relocation to Oklahoma:

(1) The Tribe had "ceded" land to the United States, without compensation, in return for the maintenance of a school on the land for at least ten years. This agreement was not carried out by the government, the school was not maintained for this length of time.

(2) The land was, according to the legislation of giving, to be disposed of only by Congress. This was not the case. The land was disposed of through auction by the GSA and through condemnation suits in the courts. These actions were both contrary to the stipulations of the legislation which gave the land to the tribe.

(3) After the surface rights of the school reserve land were sold by the GSA in the 1950's, the money from the sale should have rightly gone to the tribe. It did not.

(4) Although it is within the power of Congress to authorize the condemnation of tribally owned land, Congress had not done so with the Kaw Tribe's land. These condemnations were carried out without specific prior authorization as was made in numerous other cases involving tribal land condemnations.

(5) Indian tribes, as distinct political communities, have repeatedly been maintained as legally immune from suit, without the consent of Congress or the tribe itself. Therefore, the condemnation suits, taking the tribe's trust land, are void.

(6) The agreement made by the Corps of Engineers to transfer title in trust to the land to which the Council House was moved, was never carried out. The Corps went back on their promise, which was an explicit part of the land negotiations made between the tribe and the Corps regarding the tribe's removal from their old land.

For the above reasons, the tribe requested the Corps to make applicable Section 558b–1 of Title 33 of the United States Code which authorizes the Secretary of the Army upon the recommendation of the Chief of Engineers to "exchange land or other property of the Government for private lands or property" required for a project.

In a response in April, 1983 to Senator Don Nickles, the Director of Real Estate for the Corps upheld the legality of the condemnations and denied the applicability of the stated Code.

Senate Bill S. 1168 provides a solution to the problem which we feel is clearly equitable and just. The actions of the administrative agencies of the United States left the Kaw Tribe without any lands. The tribe is in dire need of land for its administrative offices, public housing projects, and other tribal purposes, is without resources to acquire such lands, and was promised this land in the course of the original negotiations. Great Nations, like great men, should keep their word. Senate Bill S. 1168 provides for the exchange of this land for the benefit of all concerned, and this exchange should be expedited.

Senator ANDREWS. Thank you very much for your appearance. The committee will stand in recess subject to a call from the Chair.

Mr. CHOUTEAU. Mr. Chairman, may I ask one thing.

Senator ANDREWS. Surely, go ahead.

Mr. CHOUTEAU. Will this oral testimony that I was about to give, will it be in the record?

Senator ANDREWS. In total, yes.

Mr. CHOUTEAU. All right, sir.

Ms. JOHNSON. May I make a statement? We are very disappointed that the Corps of Engineers and GSA are unable to be present at this time, especially since this matter with the tribe has been going on for over 8 years. We would have hoped that they would have formulated an opinion at this time. And with the financial situation of the tribe, it is quite possible that we will not be able to be present when the committee reconvenes in the middle of June to answer any objections that they might have to the bill in person.

Senator ANDREWS. Let me assure you that the chairman of the committee shares the chairman of the tribe's concern about this. It is very often we cannot get the witnesses from the government to appear in a timely fashion. We recognize this does, in fact, create a great deal of inconvenience on those of you who come a long way to testify. Because of your request, let me assure you and the chairman of the tribe that after we have received the testimony from the government, from the Corps of Engineers, and the other governmental witnesses, we will send that testimony to you and keep the record open for a period of time where you can comment on it so the record will be open. Will this help in what you are trying to do?

Ms. JOHNSON. Yes. I appreciate that very much.

Senator ANDREWS. Once again, the committee stands in recess subject to the call of the Chair.

[Whereupon, at 3:45 p.m., the hearing was adjourned.]

APPENDIX

Claude A. Cox
Principal Chief

Perry Mellon
Second Chief

Muscogee (Creek) Nation

Office of the Principal Chief

RECEIVED JUN 9 1983

June 6, 1983

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
417 Russell Senate Office Building
Washington, D.C. 20510

SUBJECT: S. 1249, adding a representative of Indian tribal governments to the Advisory Commission on Intergovernmental Relations.

The Muscogee Nation, this country's third largest federally recognized tribal government, is pleased to offer your Committee its reflections on the issues raised by S. 1249, a bill which would expand the membership of the Advisory Commission on Intergovernmental Relations by adding a representative of federally recognized tribal governments.

As you may know, the Muscogee Nation raised this issue several years ago by asking President Carter to fill a vacancy among the "private sector" seats on the Commission by appointing an official of a federally recognized tribal government. President Carter referred the matter to the Commission, which opposed the matter because they concluded that tribes were special interests, and not units of government.

After reviewing the Commission's letter to your office dated May 23, 1983, I am profoundly disturbed that the intervening years have not resulted in any change in the Commission's position.

In its preparation of this letter, the Muscogee Nation has studied House Report 86-742 [July 31, 1959], and Conference Report 86-1184 [September 12, 1959], which accompanied H.R. 86-6904 to its adoption as Public Law 86-380. The Commission would do well to study these documents more carefully.

The Commission's May 23 letter speaks in great detail about "criteria" which are not adopted in P.L. 86-380, nor utilized in Congressional study of these issues. House Report 86-742 does, however, speak to the purposes of the Commission. In order for the Committee to understand that S. 1249 is precisely within the specific purposes of the Commission, the purposes listed in House Report 86-742 are set forth:

Creek Nation Tribal Capitol Complex-Hiway 75 at Loop 56-P.O. Box 580-Okmulgee, Oklahoma 74447-918-756-8700

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H.R. 6904, as amended, would establish a permanent bipartisan Advisory Commission on Intergovernmental Relations which, on a continuing basis, will[:]

(1) bring together representatives of the Federal, State, and local governments for the consideration of common problems;

(2) provide a forum for discussing the administration and coordination of Federal grant and other programs requiring intergovernmental cooperation;

(3) give critical attention to the conditions and controls involved in the administration of Federal grant programs;

(4) make available technical assistance to the executive and legislative branches of the Federal Government in the review of proposed legislation to determine its overall effect on the federal system;

(5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;

(6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government; and

(7) recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers.

These seven principles were adopted as a vital component of Section 2 of P.L. 86-380, along with the following introductory paragraph:

Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.

Mr. Chairman, in addition to "population grown and scientific developments", changes in law and policy also create complexities within our federal system.

One such complexity, perhaps unforeseen in 1959 in the backwaters of the "Termination" phase of federal Indian policy, is the increasing role and responsibilities of federally recognized tribal governments.

In 1959, very few tribes had received acknowledgement of the "self-determination" necessary to operate their own programs, and no tribes were exerting their inherent sovereignty through taxation, land use zoning, nor other powers widely exercised today.

The intervening years have produced, among other milestones, the General Revenue Sharing entitlements for tribal governments, tribal government exemption from OMB Circular A-95, the Indian Self-Determination and Education Assistance Act, the American Indian Policy Review Commission and its Reports, the Tribal Government Tax Status Clarification Act, and an entire set of supportive judicial decisions, including Merrion v. Jicarilla Apache Tribe.

During this same era, the Commission has been silent on Indian affairs. Given its lack of sensitivity to the representation of tribal governments, this silence, in retrospect, at least was not as detrimental as overt opposition might have been. However, this silence has also meant that Indian issues were not considered within the parameters of comprehensive studies undertaken by the Commission.

I am not blaming the Commission for all the failures of federal Indian policy since 1959. However, had the Commission had tribal government representation, or should it have such representation through S. 1249, some of the following issues might be mitigated:

* Educational agencies created by tribal governments are not recognized as "LEAs" for purposes of federal education assistance.

* The HHS Block Grants are not equitable in the manner in which services are calculated for nor delivered to Indian people.

* The roles of tribal governments and "Indian organizations" are often equated and confused in federal policy.

* Tribes and states often identify each other as competitors for funding of delivery of federal human services.

Public Law 86-380 consistently refers, in Sections 2 and 5, to "the levels of government", but the Commission's position in its May 23 letter seems to take an 8th-grade Civics approach that 'there are three levels of government.' Most students of intergovernmental relations acknowlege that our federal system is multi-layered, and that different levels include national, state, local, tribal, interstate regional, substate regional, and special purpose units of government.

Granted, adding a representative of tribal government to the Commission would change the governmental balance and the partisan balance, but it would only alter those balances and would indeed not destroy them. The bill provides for appointment of elected tribal government officers. Tribes are general units of government, easily distinguishable from conservation districts and school boards. The Commission contends that tribal governments are "not universal", in that we are found in 33 of the 50 states. Notwithstanding this fact, tribal government treaties of cession or removal are the basis for land titles in 48 states, and Petitions for Acknowledgement of Existance as an Indian Tribe [under 25 CFR 54] have been received to date from 31 states. The Muscogee Nation anticipates that the final result of the Federal Acknowledgement Project will be federal recognition of tribal governments in all but a few states.

There is no language, nor any inference, in House Report 86-742 nor Conference Report 86-1184, which would exclude tribal governments from participation in the Commission as full members. It has apparently been a presidential option since 1959 to appoint tribal government officers as "private citizens, all [three] of whom shall have had experience or familiarity with relations between the levels of government" as provided by Section 3(a)(1) of P.L. 86-380.

However, it was exactly this option which the Commission was emphatically opposed to under the Carter administration.

The fact that Congress did not specifically provide for tribal government representatives in the 1959 Act did not exclude tribal representation, and in my opinion the Commission has been negligent of the federal trust responsibility for Indian affairs in not ensuring that tribal government representation be recommended, either to the President under Section 3(a)(1), or to the Congress in its consideration of S. 1249.

The Commission's current attitude on Indian affairs is expressed in its May 23 letter, which stated in part:

> Under a long-standing policy (copy enclosed), if ACIR ever undertakes research that directly studies Indian governance subjects, the Commission would appoint two special advisors for the duration of that project. These special advisors would be drawn from officials nominated by the appropriate public interest groups. [Emphasis supplied.]

Can it really be true that, in its twenty-four year history, the Commission has never considered issues in Indian affairs? Can the Commission have adequately studied education, health, block grants, transportation, intergovernmental compacts, and similar issues without once considering tribal interests?

I believe that, with the issues above considered, that it is about twenty-four years late for tribal government representatives to be added to the Commission.

Select Committee on Indian Affairs
June 6, 1983
Page Five

On behalf of the Muscogee Nation, I therefore support S. 1249, and recommend favorable action by your Committee notwithstanding the position of the Executive Director of the Advisory Commission on Intergovernmental Relations.

In House Report 86-742, Senator Clifford P. Case of New Jersey is quoted as saying:

> The interrelation of Federal, State and local governmental units brought about by this growth has in turn created problems of its own. Our Federal system has had to adjust in a manner undreamed of by our Founding Fathers. Since much of the expansion in government has been on an ad hoc basis, it is perhaps only natural that inefficiency and confusion have frequently accompanied this growth.

Your Committee has the opportunity to make changes in the Commission, in strict response to the changes in federal Indian policy since 1959. The Commission, of all agencies, should not be allowed to be inefficient nor confused on the participation and role of tribal governments in the federal system.

Sincerely,

Claude A. Cox
Principal Chief
Muscogee Nation

cc: Susan S. Harjo
403 10th Street, S.E.
Washington, D.C. 20003

LAW OFFICES
SONOSKY, CHAMBERS, SACHSE & GUIDO
1050 31ST STREET, N.W.
WASHINGTON, D.C. 20007
TELEPHONE
(202) 342-9131

MARVIN J. SONOSKY
HARRY R. SACHSE
REID PEYTON CHAMBERS
KENNETH J. GUIDO, JR.

WILLIAM R. PERRY
LLOYD BENTON MILLER
KEVIN A. GRIFFIN
MARY V. BARNEY
LOFTUS E. BECKER, JR.
DONALD J. SIMON

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June 6, 1983

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Honorable Mark Andrews
Chairman
Senate Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Re: S. 1249 (143.21)

Dear Senator Andrews:

On behalf of our tribal clients, we write in support of S. 1249, a bill to add a representative of tribal government to the Advisory Commission on Intergovernmental Relations (ACIR.) Please add our comments to the record of the hearing held on May 26, 1983.

The ACIR is currently composed of representatives of federal, state, and local governments. One of its duties is to consider problems shared by all three levels of government. Tribal governments should participate in such discussions because they have many of the same responsibilities to their constituents as do state and local governments, and therefore face many of the same problems. For example, tribal governments are responsible for administration of essential services such as crime prevention, health, sanitation, fire fighting, and environmental protection. Many of them must manage natural resources such as minerals, timber, and grazing land. Tribal courts have jurisdiction over a broad range of civil and criminal matters that affect Indians. In short, like the other governments represented on the ACIR, tribal governments exercise sovereign powers and in so doing face a host of complex problems.

The ACIR is intended to provide a forum for discussion of problems that require intergovernmental cooperation. Many such problems that the ACIR has addressed -- such as air pollution, federal deregulation, and allocation of resources within the criminal justice system -- are also faced by tribal governments. Their perspective on these problems is valuable and should be heard. Also, with respect to some of these problems, tribes have unique concerns that must be addressed in devising a comprehensive solution. For example, because they cannot prosecute crimes committed by whites against Indians on the reservation, and the states generally have no jurisdiction over such matters, tribes have a special interest in allocation of federal resources in this area.

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In the near future, the ACIR will take up issues that are of recognized and immediate importance to tribal governments. For example, in the fall it will discuss mineral severance taxes. Many tribes have imposed their own severance taxes, and the states' authority to impose their severance taxes on tribal minerals is a significant issue. Clearly, a tribal representative should participate in these discussions and have full authority to assist in formulating the ACIR's recommendations. Yet, the current plan is to appoint a nonvoting tribal representative to "sit in" on the severance tax deliberations. Such an arrangement fails to acknowledge the equal interest tribes have in consideration of this important issue, and would almost certainly give tribes a lesser voice in such consideration than other governments will enjoy.

We understand that the ACIR has opposed addition of a tribal representative to its ranks on the ground that tribal governments are not "universal" governments. By this it apparently means that these governments do not exist in every state, and also have somewhat more limited powers than do the other governments represented on the ACIR. We have been informed by ACIR staff that they view tribal governments as more analogous to "special purpose" entities such as school boards, than to "general purpose" governments such as state legislatures.

This view of tribal governments is simply wrong. Tribal governments are clearly "general purpose governments" with the power to regulate every aspect of tribal affairs. For example, in Wheeler v. United States, 435 U.S. 313, 322 (1978), the Supreme Court spoke of "tribal sovereignty" and stated that tribes have "the power of regulating their internal and social relations . . . and to enforce those laws by criminal sanctions" [citations omitted.] In the exercise of their sovereignty, tribal governments create their own courts and administrative agencies and exercise a broad range of legislative powers. The Supreme Court in recent years has affirmed the governmental authority of tribes to tax oil producers and other non-Indians doing business on the reservation. Merrion v. Jicarilla Apache Tribe, 102 S. Ct. 894 (1982); Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 (1980). Indeed, because they provide employment and many essential services to a very high percentage of their constituents, tribal governments' role in Indian communities is even more significant than that of many state and local governments within their jurisdictions. We can only conclude that the ACIR's position is based on an incomplete knowledge of the nature of tribal governments.

As for the fact that tribal governments do not exist in every state, this should not be grounds for their exclusion. We might remind the ACIR that the Indian population was once much more widely dispersed than it is now. Due to disease, destruction of their hunting grounds, depredations by whites, and the United States' policy of forcing them onto reservations, Indian tribes now live in much more circumscribed areas than do white citizens. But that has nothing to do with their governmental authority, which has been repeatedly reaffirmed by the courts. And in light of this history, it would certainly be anomalous to exclude tribal governments on the ground that they do not exist in every state.

In any event, the "universal government" issue is in fact irrelevant, because there are already three members of the commission who do not represent such governments. They are private citizens who are chosen because they have some type of government experience or knowledge.

The ACIR's position is also contrary to President Reagan's policy, announced in January of this year, of dealing with tribes on a government to government basis. In fact, the bills that would add a representative of tribal government to the ACIR were introduced at the President's request. The President's policy is a sound one that enjoys substantial bipartisan support as well as strong tribal support. Addition of a tribal representative to the ACIR would be a small but important step toward fulfillment of this policy.

Kind personal regards.

Sincerely,

Reid Chambers

Reid Peyton Chambers

RPC/md

cc: Honorable Jack Brooks
Chairman, House Committee on
Government Operations

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